CHAPTER - I

INTRODUCTION

I. GENERAL INTRODUCTION

The law enforcement agencies of the State together with a few other institutions of the State Administration make up the Criminal Justice System of the country. The main agencies involved in this function are: the Police, the Prosecution, the Courts and the Prisons. But this list of institutions is not exhaustive. In certain jurisdictions there are institutions, particularly private institutions which are employed to assist the official agencies in carrying out the task of enforcing the laws.

With regard to matters of enforcing the laws different kinds of responsibilities are shouldered by different agencies. For example, the work of investigating into crimes is entrusted to the police; the responsibility of prosecuting the accused in the court of law is entrusted to the prosecuting agencies, and the responsibility of keeping the prisoners in custody is entrusted to prison authorities.

But apart from the Police, the Prosecution and the Prison authorities certain private agencies also are engaged to manage the duties of these agencies. There are also security agencies of a private kind for keeping the prisoners, the accused and the suspects in custody.

Whatever might be the kind of agency performing the function of enforcing the law there are certain principles which the law enforcement agencies of the State are supposed to observe in managing the system of criminal justice.

Though these principles are many and they are growing in number day by day, the two important principles which are of basic value and which govern the system of criminal justice in very wide terms are the Due Process Theory and the Crime Control theory. These two theories are not the same in fact; they are rather contrasting theories and have originated and developed at different times in different contexts.

The theory of Due Process of Law had emerged in the context of protecting the rights of the individuals against the arbitrary authority of the law enforcement agencies. But owing to changes in the policies of the State and the problems which the authorities had to face in dealing with the problem of crime a different approach was adopted modifying the methods of law enforcement, giving preference to Crime Control Theory over the Due Process Theory.

The theory of Due Process of Law was the earliest in point of time and had the object of protecting
the rights of the individuals against the arbitrary authority of the State, whereas the Crime Control Theory arose due to peculiar conditions of the time; it was employed to pursue the interests of the State and control the menace of crime without caring for the rights of the individuals. In other words, this theory gave primacy to the authority of the State over the rights of the individuals.

Though the Crime Control Theory is later in time it has somehow become a common and popular method of administering the laws and is being followed by the modern States in administering criminal justice.

It is this transition from one dynamic theory to another disturbing trend which is the theme of the investigation done by the undersigned in the department of Law of Shri Jagdish Prasad Jhabarmal Tibrewala University of Rajasthan under the title ‘Due Process of Law And the Recent Trends in the Judicial Process of India’.

This research work has the aim of studying the status of the high principle of Due Process of Law as it exists in our country and in other countries of the world. This principle once upon a time was a very significant aspect of the Criminal Justice System of our country and of several other countries in the world but the changing conditions of society have disturbed the efficacy of the principle and affected thereby the scope of safeguards that were available to the individuals.

II. BACKGROUND TO THE STUDY

The theory of Due Process of Law worked all along worked as fundamental principles of State Administration. Being a principle related to the Administration of Justice it founds its sustenance in the fundamental law of the ground, specifically, the establishment of nation. The salient features of this theory and the modifications that have come to be noticed in the application of this theory have been studied in the background of the essential act of the terrain, explicitly, the charter of the nation. The developments affecting the implications of this theory have been studied and the impact which these developments have on the rights of the individuals has been pointed out. The effect of the developments on the nature and scope of the rights of the individuals and the protection that is missing to them in matters of justice have been studied.

In the system of justice existing at present, in our country as in other countries, there are two theories which have appeared at different times in the context of administration of justice, they bear the characteristics quite different from each other. These theories are known as the Theory of Due Process of Law and the Crime Control Theory.
These theories impact on the rights of the individuals when the enforcement officials implement them to perform their functions and responsibilities. Thus, the theory of Due Process of Law has to be studied in the background of the fundamental principles relating to the system of criminal justice.

III. SIGNIFICANCE OF THE TOPIC OF RESEARCH

The subject of Due Process of Law moderately significant in the olden times of English Law for the great protection it afforded to the rights of the individuals against the authority of the Crown. However, the term Due process of law is not in vogue presently in English legal system; though two parallel concepts regularly used in English Legal System are the Principle of Natural impartiality and the belief of regulation of Law. Generally the expression ‘Principles of Natural Justice’ can be made applicable merely to judgment of organization society as well as several of the confidential committee similar to trade unions and not so much to other institutions.

Typically a British constitutional principle which was expressed by lecturer A. V. Dicey plus anyother.⁴ Although, none of the concept match up completely by means of the American hypothesis of due process, is elucidates under, currently surrounded numerous implicit privileges it can not be found in the earliest or contemporary impression of due process in England.

In England Clause 39 of the Magna Carta had developed the concept of Due Process of Law. English and American law slowly swerved that due process does not taken into consideration in United Kingdom except it was integrated charter of United States.² Due process is the legal necessity and it is mandatory for the state to esteem every legal privileges with which an individual is enshrined.

Due process is a concept which maintains balance between the authority of rule of the land as well as protection of the character person as of now whenever administration troubles an individual by being ignorant to route of the act it falls under a due-process infringement that insult in opposition to the rule of law.

Very often due process is stated as it checks and balances; preventing act as well as permissible procedures so that judges would pay due attention for application and guarantee of fundamental transparency, justice, and liberty.

This understanding is similar as the notion about the procedural fairness and natural impartiality defined in a number of different authorities. Sometimes analysis regarding the due process is considered as a charged by the administration and it must be fair to individual and not mistreatment the people actually.
Due Process, in short is a route of lawful procedures concurrence to regulations as well as main beliefs to included institute in a classification jurisprudence intended by protection and delivering individual confidential & personal rights.

In due process considers implements authorities of administration the rule consents as well as authorizes, underneath saftynet of individual rights. It is mainly connected by means of basic surety of the US foundation; due process originates commencing untimely English general rule as well as lawful history.³

As in other countries, In India the idea underlying the theory of Due Process of Law acts as a principle of natural justice and Rule of Law. The philosophy of normal fairness has practical several cases in determination of the rights and duties of the litigants.

Therefore therein is no law which can be directly applied to the transaction in dispute $ the matter is decided by the courts by taking into consideration the principles of natural justice. In State of Orissa v. Dr. (Miss) Binapani Dei and Ors.⁴, Shah, J., agreement by means of analysis in respect of the exact era of an administration servant, scrutinizes to facilitate the analysis furthermore judgment converse to the fundamental perception of impartiality plus it can’t hold several significance thereof.

It can undoubted to facilitate decision is of government in nature however as stated earlier still executive direct the engages general effect should be prepared in consistence of the regulations and principles of normal impartiality.

The objective of rules of “natural justice” is to stop the failure of impartiality or to find it positively is to secure fairness. The regulations be able to function the regions not enclosed by regulation reasonably.

Alternatively it may be said that they does not displace regulation of the land however enhancement. Pertinently in the recent years, the conception of ordinary impartiality has to underneath go through drastic positive amend. As per the history these is believed so as to comprise of set of laws only namely:

(1) Not a single person shall be a arbitrator in the trail on itself (Nemo debet esse judex propria causa) and

(2) No judgment should be provided to any other parties of the case in opposition to by lack of have enough money a logical trial (audi alteram partem).
Almost immediately afterwards a third law of natural justice visualized which provides is consider as quasi-legal investigation it can not arbitrary or unreasonably but shall alleged in good faith as well as lack prejudice. But in the due course of time many supplemental rules were supplementary to the regulations of normal impartiality. Priorly it was the estimated by judges that if the concerned ability would necessitate under Act it functions, to operate intelligently regulations of usual fairness it can’t be functional.

Now the strength of this restriction is widely enquired. The main function of the normal impartiality is to stop miscarriage of impartiality it is difficult to understand that what is the reason that the regulations are not made appropriate to managerial investigations.

Frequently it is complicated to set the limit of which separate management investigations since the quasi-judicial examinations. At once the Investigations were believed by the government are at the present measured as quasi-judicial in nature. The ultimate aim of both quasi-judicial and the administrative enquiries are to arrive at a just judgment. In an organizational investigation, an unjust decision will be having additional effect when compared to the judgment in a quasi-judicial analysis.

Court in Suresh Koshy George v. The University of Kerala and Ors.\(^5\) observed that the regulation of usual impartiality lacks the crystallised in nature. The applicability of specific regulation of natural fairness in any trail ought be depend on the evidence and situation of the trail, the structure of the rule below analysis is assumed as well as the charter of the court or committee of individual selected by extremely similar function.

On a protest in any tribunal regarding contravention of the natural fairness the judge is to pass judgement that in order to arrive at a current judgment on the evidence of the trail the observance of that was necessary or not.”

In A. K. Kraipak v. Union of India in the case advised was given through the trained Attorney-General that the assortment committee was merely a advising committee. Firstly the Home Ministry had to consider the recommendations followed by the U.P.S.C. The ultimate suggestion in the council was given by the U.P.S.C. Therefore complaints of the person filling the case are baseless. Moreover though allowing for the authority of managerial behaviour, regard must be given to whether the ultimate decision in such action is just or not.

However the court was not capable to accept the suggestion given by the Attorney-General as well as the suggestion made by the advising committee on collection committee were of slight effect. Considering the formation of the committee as well as its character of the responsibility imposed it is beyond uncertainty
about the suggestion which must be performed by substantial burden by the U.P.S.C. However if the judgment of the advising committee is said to be vitiated, there remains not an iota of doubt the ultimate suggestion given by the Committee should be said to vitiated. The suggestion given by the UPSC will be associated from the advised given by the advising committee.

Thus, the significance of Due Process of Law Theory is that in certain new branches of law like the Administrative Law etc. the theory of Due Process has taken the form of Principles of Natural justice, which principle is applicable now to the administrative proceedings. Previously, the principle of due process and the principles of natural justice were applicable to judicial proceedings only, but now they are applicable to administrative proceedings also. Hence, any administrative body which takes a decision concerning the life, liberty or property of the individual must scrutinize principles of natural impartiality and the elements of natural impartiality also have expanded considerably. This is how the concept of Due Process and its new form in Administrative Law, known as ideology of Natural fairness and Regulation of Law have grown in significance and they need to know more about it if he is involved in studying the nature and scope of Due Process of Law.

IV. DECLARATION OF THE PROBLEM

While there has been tremendous expansion in the nature and scope of the Principles of Due Process in India, and different forms of this principle are known by the phrase ‘Ethics of Natural fairness ’, as well as ‘Regulation of Law’ and their application is seen during the peacetime what has hampered the further growth of Due Process of Law and the observance of Due Process in the administration of criminal justice is the emergence of the Crime Control Theory which has peculiar features of its own and the researcher is firm in his belief that it is the impact of Crime Control Theory which is undermining the force and vigour of the Due Process theory. The emergence of the Crime Control Theory is owing to the change in the condition of society when we saw the incidents of public violence, offences affecting the public safety, public health and public tranquillity. Such a change in society is not only in our own country but in several countries of the world. Rather, the international scenario is evident of the disturbing trends as far as the theory of due process is concerned.

Therefore the laws enacted at the national and international levels on the subject of terrorism, public safety, public economy, public health, human trafficking, drug control etc. have the tendency of dealing with crimes of international character in the same manner as the Star Chamber ages ago was dealing with such a problem without regard to fairness and human approach.

A brief reference may be made to the Patriot Act of the American Legal System, the Terrorism and Disruptive Activities Act and the Prevention of Terrorism Act of the Indian Legal System which preferred to follow the theory of crime control over the theory of due process of law. Apart from the legislative
enactments referred to above there are methods adopted by the law enforcement officials according to which there are trends which have caused a setback to the concept of Due Process of Law and tried to establish the hegemony of Crime Control theory.

The disturbing trends in the system of criminal justice have been the legislative measures adopted in recent years for controlling the problem of crimes. Though the concept of Crime Control was adopted in the Medieval Ages when there was a threat to Christianity and a threat to the great name of the Christian Church the method of Crime Control has been adopted with regard to various secular matters, such as, the public safety, public order, public health, public decency etc.

As an illustration of such a trend can first be what is happening in United States when series of legislative and administrative measures are being adopted to control the problem of crime without caring for the adverse impact such measures would have on the ancient concept of Due Process of Law which stood for fairness in administering the law. The Patriot Act 2001 which came into force from 2002 is an example of such legislation. This legislation was adopted by the US as the incidence took place on eleventh September 2001 the attack on World Trade Centre in New York City and the Pentagon in which more than two thousand persons were killed.

The then Patriot Act of the United States it was signed into Act by by the erstwhile President on October 26, 2001. The heading of the given Law was a ten letter acronym (US A PATRIOT) continues to Strengthen America & Providing necessary Tools order to Intercept S Obstruct Terrorism Act of 2001.

The Rules and Regulation, in consequence of the attacks on eleventh September, erode to a great deal limitations for law implementing agencies' picking up leads for intelligence gathering within the United States; Secretary of the Treasury's power was intensified to control monetary dealings, chiefly entails overseas persons as well as body; were provided with expanded discretionary powers of law enforcement and to the colonization powers to be in arresting plus banishing refugee who is suspected for any terror related intentions. The performance also to be prolonged the description on terrorism to comprise marital terrorism, consequently increasing the quantity of actions through which USA PATRIOT Act’s prolonged rule imposed authority can be implemented.

In India also the Union Parliament and certain State Legislatures have enacted laws on the lines of the laws enacted by other countries. Among the laws which have departed from the fundamental principle of Due Process Theory are the Central Laws like the preservation of Inside Security Act (MISA), the Terrorist and Disruptive actions Prevention Act (TADA) the Prevention of Terrorism Act (POTA), UAPA, etc. Among the State Laws which have bypassed the principle of Due Process and adopted the Crime Control Theory are the State Laws like the Maharashtra Crime Control Act (MCOCA) enacted by the Maharashtra Legislative Assembly.
V. RATIONALE FOR STUDY

In view of the great importance the Theory of Due Process of Law has in the Private and Public Law, particularly with regard to matters of justice in the civil as well as criminal justice there is need to know to what extent the system of justice adheres to the theory of due process and to what extent it adheres to the theory of crime control. An evaluation of the system of justice since the direct of vision of the application due process of regulation would determine respect which the criminal justice would have in the society.

The theory of due process of law has at present entered the area of administrative law; therefore the theory of due process is relevant to administrative adjudication as well. The three specific areas with regard to which the theory of due process has a great role to play are the matters of civil justice, criminal justice and administrative justice.

The significance about this theory sets in the information that the recent conditions of the system of justice show a disturbing trend in the matter of civil and criminal justice. The rights which an individual could avail against the enforcement officials could no longer avail them in view of the crime control theory which has occupied an important place in the system of justice. Such a change is detrimental to the rights of the individuals.

Not only the legal system of India but the legal systems of other countries also can show what respect they give to the theory of Due Process of Law and in what matters they give importance to Crime Control Theory.

VI. LITERATURE REVIEW

On the subject of Due Process Theory and the Crime Control Theory volumes have been written by the Indian and foreign writers. Those who have written on these two theories have written from the point of view of the significance of these theories in the system of criminal justice and touched upon the related matters including the causes of crime and how the problem of crime may be dealt with.

They have covered either the whole system of criminal justice or they have touched on one particular aspect of the system of criminal justice. These writers have stated that in recent years the trend in the system of criminal justice is that it is affecting the functioning of various units of criminal justice system with the result that either the law is harsh or the enforcement officials have arbitrary powers to exercise, and
all these have their adverse effect on the rights of the individuals. Such a change is reflected in the literature which has come up in recent years.

Learned writers on the system of criminal justice have pointed out the change very nicely which go to establish the need for reverting to the system of due process and halting the system of crime control. In certain cases the judges dealing with the cases pointed out the emerging trend; even the enquiry commissioners who had to suggest changes in the law pointed out the need for such a change. The following are a few of the writers whose works have been reviewed by the researcher:

Travis Hirschi is one of the most popular writers in United States who has written on the Causes of Crime and has offered the view that if we control the causes of crime it is possible to solve the crime problem. He was a Professor of Sociology at the Berkeley University and he also wrote on the subject of Delinquency and the methods of controlling the problem of crimes.

Hirschi explained about four components that will influence one's probability of in compliance to, or different from, the average of culture, universal presumption of offence symbolize a extra specific direct presumption which identifies self-discipline, relatively than societal manage, as the basis of illegality or compliance.

An enormous weight is to be compensated on parental background, as this is the foundation of socialization that instills restraint in a kid, even though various play fundamental role in the course of good or unacceptable socialization. Unrestricted strategy proposition of these assumption provide evidence to be a wearisome subject, although much power was accessible by sociologists reassess Hirschi's hypothesis. Although these presumption persist to take pleasure in their attractiveness now.6

He wrote his first article on a universal presumption of offence in 1990 and afterwards in joint authorship with another professor, Gottfredson on the Causes of Delinquency.

His second book was much brother in scope than the first one but the theme was the same as the first one as he addressed the problem of causes of crime and suggested a few steps to deal with the problem of crime. This is a more refined control theory than originally presented over twenty years earlier by Hirschi. This utilitarian theory evolved to propose that self-control is the universal theory approximately which each and every one of the identified evidence regarding wrong preserve be controlled.7

Herbert Packer, a Stanford University regulation lecturer, create two models, on the system of illegal impartiality, the Crime Control model and the Due Process Model, to represent the two competing systems of values operating within criminal justice. The tension between the two accounts for the conflict and disharmony that now is observable in the criminal justice system.
The following assertions are the key concerns of the crime control model:

1. Crime repression shall be the integral meaning of illegal impartiality system as command is a compulsory proviso for a liberated humanity.

2. Illegal fairness system shall ponder on justify sufferers human rights somewhat than on defending defendants' civil rights.

3. Police force authority shall be extended to create it easier and expedient to examine, detain, investigate, grab, and offender.

4. Legal technicalities such as handcuffing by the law enforcement should be abolished.

5. The illegal fairness procedure shall work similar to communicate restraint, poignant cases quickly all along to take final nature.

6. In case police force detain any person the victims files the criminal charges against the offender and it shall be supposed responsible for reason that the evidence of police force and victim are extremely dependable.

7. The foremost idea of the illegal fairness procedure or must be determine the reality or else set up the truthful fault of the accused.

Packer's due process form is counter-proposal to the offence organize form. It consists of these opinions:

1. The integral purpose of illegal fairness it should be offered due process, or essential justice below the act.

2. Illegal fairness system shall deliberate on accused obligations, rather than sufferers’ power, for the reason that the Bill of Rights specifically offers through the safeguarding of accused' basic rights.

3. Law enforcement authority must be restricted in order to avoid administrator domination of the person.

4. Legitimate human rights are simply not mechanics; illegal impartiality establishment shall be assumed answerable to set of laws, trial, and rule in order to make sure justice and regularity in the impartiality procedure.
5. The illegal fairness procedure shall be similar to obstruction route, includes a sequence of obstruction it obtains appearance of technical protection which provides as a great deal to defend the exactly blameless as to offender the literally responsible.

6. The administration shall not consider a individual responsible only on the foundation of the evidence; relatively he ought be establish responsible simply administration track lawful dealings in its proof-finding.

In the year of 1977, an overseas biased science lecturer elucidated the current location in overseas in favour of the advantage of American advocate. He said that an American legitimate advocate would astonished by the indirectness of orientation to the phrase ‘due process of law’ in the universal code of lawful characters. Nowadays a person gets no freedom dedicated to due process in Hal sbury’s Laws of England, in Stephen’s Commentaries on Anson’s Law and Customs of the Formation. The idiom charges no admission in any vocation as Stroud’s Judicial Dictionary or Wharton’s Law Lexicon.

The two alike perception in modern English rule of normal fairness (frequently be relevant simply to verdicts of organizational actions as well as several of personal entities similar to trade unions as well as the British legitimate perception of the regulation of Act as produced by A. V. Dicey. Though, nor of the notion outlines are clearly demarcated in the conceptions of the process which at present comprises of many implied rights could be subjective $ has neither the history normodern concepts of due process in England.

During World War II, Judge Louis E. Goodman the case of native Californian Masaaki Kuwabara was dismissed and 25 other draft resisters from Tule Lake Segregation Center on due process grounds. His decision for the defense was unique among the Japanese-American draft resistance cases, and pushed the cases in to the background on the Japanese evacuation and California's anti-Japanese Alien Land Law had not been tried the Supreme Court yet: Defendant was at all times with which we are concerned, in actual confinement pursuant to the President's Order. Whether such confinement is lawful or not, is beside the question.

It does not follow that because the war power may allow the detention of defendant at Tulelake, the guarantees of the Bill of Rights and other Constitutional provisions are abrogated by the existence of war.... The defendant cannot be denied the protection of the guarantee of due process because of the war or danger to national security but only upon a valid declaration of martial law.... It is shocking to the conscience that an American citizen be confined on the ground of disloyalty, and then, while so under duress and restraint, be compelled to serve in the armed forces, or be prosecuted for not yielding to such compulsion. Certainly "fair and just" compulsory military training in a "free society" is wholly inconsistent with the instant proceeding. The issue raised by this motion is without precedent.
It must be resolved in the light of the traditional and historic Anglo-American approach to the time-honoured doctrine of "due process." It must not give way to overzealousness in an attempt to reach, via the criminal process, those whom we may regard as undesirable citizens.

The research scholar reviewed the Canadian Due Process Law in the book titled as due procedure & sufferers Right: the fresh Law as well as Politics of illegal impartiality by Kent Roach, University of Toronto Press Canada.

The author, Kent Roach has condemned the Canadian "Due Process Law" as unfair. The law gives right to police to kill a 'fleeing felon 'even if the suspect does not pose danger to the life of the police official and the other members of the public. The police in Canada have been raising “self defence” issue and simultaneously attacked the character of the black (Negro) victim who just stole bread from a shop because he was perhaps jobless and hungry. The Canadian due process law is against the blacks. The Ontario Commission said that blacks are vulnerable to police violence.

The research scholar reviewed yet another book by black author, Rodney King, titled "The Riot Within: My Journey from Rebellion to Redemption." The author was himself a victim of Los Angeles Police brutality. The traffic police beat him up just because he was black guy and broke traffic rule. King was beaten by the Los Angeles Police Department following a 1991 traffic stop. The violent beating, during which four cops hit and kicked Rodney King more than 50 times, was filmed by a man who saw the incident from his home.

The tape was given to a Los Angeles TV station, and quickly became a national phenomenon. The case came to trial in 1992, but the white policemen involved in King's beating were acquitted, igniting deadly riots in Los Angeles. The book condemns the American Due Process Law, it being soft on white community and harsh on black community.

The research scholar has also reviewed the article written by Y.P.Singh for mer IPS official and currently an advocate practicing in Bombay High Court who is in the light due to his bold and investigative advocacy, in Tehelka Magazine Vol. 7 Issue 03 Dated 23 January 2010 the shocking revelation of specific cases of gross misuse of MCOCA by Tehelka Magazine should bring any nation governed by just, equitable and liberal principles close to despair. In 1791, the Fifth Amendment to the Constitution of the United States was enacted.

It stated not a single individual would subsist deprived of living, freedom or possessions lacking the
“due procedure of law”. When the Indian Constitution was drafted, its Article 21 used analogous words: “Not a single individual should be deprived of its existence or private freedom except according to course of action recognized by law.”

The difference between “due process of law” and “procedure established by law” is that under the American system, a law must satisfy the criteria of a liberal democracy. Our “procedure established by law”, on the other hand, means a law duly enacted is valid even if it’s contrary to principles of justice and equity.

Not only that a lawful agency should be there to prosecute and punish any citizen or alien but the law enacted must be fair and must have safeguards for innocent citizens and aliens. Hundreds of foreign nationals are languishing in Tihar Jail under draconian laws of Indian States like Maharashtra and Chhattisgarh.

VII. HYPOTHESIS

This study is guided by the factors that from good old days the law enforcement agencies observed the Due Process Theory, without being subservient to feelings of racism, localism and communal passions. Besides this theory they followed the Principles of Natural Justice and Rule of Law for the purpose of being just, fair and reasonable to the parties involved in the disputes coming before the courts for determination.

But from the close of 20th century the trend has changed. Instead of being obedient to the fundamental principle of Due Process of Law they have given themselves over to the petty feelings and narrow prejudices. The worst of all is that the legislation enacted for the so-called problem of terrorism, public safety, currency trafficking etc. the ancient theory of Due Process of Law is given a secondary position and primacy is given to Crime Control Theory.

In India also the principle of due procedure as well as the principle of regulation of bylaw were observed by the rules enforcement agencies earlier, and these principles have been provided in the Constitution after Independence because of which the law enforcement agencies are supposed to follow the theory of due process in all that they are called upon to do in the matter of enforcing the provisions of law.

But the recent developments in Law and Policy tend to show that there are disturbing trends affecting the majesty of the idea of Due Process Theory. It is not that the theory of Due Process has been given a total good bye; the situation is that owing to changes in the socio economic conditions of the people and the attitude of the law enforcement officials the theory of Due Process of Law has lost its efficacy in several respects and the theory of Due Process has receded into the background and is very much disturbed.
by the changing attitude of the law enforcement officials.

The working of the theory of Due Process today is in a very modest form and the emerging trend is evidence of the domination of crime control theory over the theory of Due Process of Law. The impact of the new theory on the functioning of criminal justice system in the traditional way is a fit subject for a detailed study.

VIII. METHODOLOGY

The above hypothesis has been examined by analytical and historical reviews of the legislation in force in our country since Independence and an evaluation has been made of what has been enacted in our country after independence. An effort has been made to know what is good in our system and what is missing in our system of criminal justice.

The researcher conducted a part of the research by the Library method of research and reviewed the literature on Criminal Law to note what are the basic attributes of our system of criminal justice and how we have drifted from the fundamental principles of our Constitution and moved over to Crime Control Theory and bypassed the Due Process of Law Theory. Material for this part of the work has been gathered from the public libraries of the State of Maharashtra where the researcher resides and the State of Rajasthan where the researcher had registered his candidature for Ph.D.

The methodology is supplemented by interviewing a few of the influential law enforcement officials of Maharashtra and discussing with them the problems which they have faced in implementing of Due Process Theory and the difficulty the individuals have suffered when they were denied the protection of due process and subjected to Crime Control theory.

IX. AIMS AND OBJECTIVES OF STUDY

Research has been done on the above aspects of the subject with the following among other aims and objectives:

1. To expound the concept of Criminal Justice;

2. To note the salient features of the Theory of Due Process of Law and those of Crime control theory;

3. To study the historical perspectives of the two theories and note the impact they had when they were followed by the law enforcers;

4. To study the system obtaining in foreign jurisdictions, particularly the United States of America,
Canada, United Kingdom and Australia;

2.5. To note the circumstances in which India has to follow the Crime Control Theory;

(vi) To note the impact which the Crime Control Theory has on the rights of the individuals and how it is
enhancing the authority of the State in various matters;
(vii) To evaluate finally the present day status of Criminal Justice Process and note the reasons
which have contributed to this situation.

X. SCHEME OF PRESENTATION OF CHAPTERS:

The Thesis is presented by dividing the data into nine (9) chapters. A brief description of the
contents of each of these nine chapters may be given as under:

CHAPTER I ‘INTRODUCTION’ gives an outline of the work undertaken on the subject of Due
Process Theory and the Recent Trends in the System of Criminal Justice. It describes first the factors which
impelled the researcher to undertake a study on this subject, the significance of the work, the problem which
had to be investigated, and the hypothesis formulated for the purpose and the methodology that was adop
ted to investigate the question thoroughly.

CHAPTER II ‘CONCEPTUAL STUDY OF THE THEORY OF DUE PROCESS OF LAW’ expounds the theory which had arisen way back in the 13th century as a provision well laid down in the
ancient Magna Carta and which in course of time spread far and wide on account of its nice principles. This
chapter explains the meaning assigned to the Due Process theory and how it contrasts with the Crime Con
tral Theory. The characteristics of both the theories have been highlighted.

CHAPTER III ‘HISTORICAL PERSPECTIVES ON THE THEORY OF DUE PROCESS OF LAW’ explains the historical background of the Theories of Due Process of Law and
the Crime Control Theory and points out how the conditions of the time forced the authorities to adopt the
Crime Control Theory.

CHAPTER IV ‘THEORY OF DUE PROCESS OF LAW IN FOREIGN JURISDICTIONS’ studies the
situation obtaining in great legal systems like the United States of America, the United Kingdom, Canada
and Australia and notes the contribution this theory has made to the system of criminal justice.

CHAPTER V ‘DISTURBING TRENDS CAUSING A SETBACK TO THE THEORY OF DUE
PROCESS IN FOREIGN JURISDICTIONS’ studies what has happened in United States of America and
other countries on account of which they introduced drastic changes in the system of criminal justice and
gave preference to the Crime Control Theory against the Due Process Theory.
CHAPTER VI ‘DUE PROCESS THEORY IN INDIA’ covers the fundamental principles according to which India has to follow the Due Process Theory; it also studies the bare provisions of law according to which there is Due Process Theory in the administration of Criminal Justice in India. A special reference has been made to the Judicial Process to explain how the Due Process Theory is applicable to Judicial Process in India.

CHAPTER VII ‘DUE PROCESS THEORY IN ADMINISTRATIVE PROCEEDINGS’ covers the provisions of Administrative Law according to which the administrative agencies have to adjudicate upon the disputes of individuals and implement the notion of regulation of Law plus enforce its principles in Natural Law.

CHAPTER VIII ‘RECENT TRENDS IN CRIMINAL JUSTICE PROCEEDINGS CAUSING A SETBACK TO THE THEORY OF DUE PROCESS’ highlights the conditions on account of which the theory of due process has suffered a setback in our country and the Crime Control Theory is very much in vogue. The impact which this change has had on the rights of the individuals and on the fundamental principles of our legal system has been highlighted.

CHAPTER IX ‘CONCLUSION’ gives a summary of the research done on the subject, the findings of the researcher and his recommendations to improve the system of criminal justice process by adopting an appropriate theory of criminal justice.