CONCEPTUAL STUDY OF THE THEORY OF DUE PROCESS OF LAW AND THE EMERGING TRENDS

In a study concerning the functioning of the law enforcement agencies the first thing that needs to be highlighted is the basic principle on which the system of law enforcement stands. The first principle with which the research starts is the Due Process Theory, in which the theoretical aspects of the theory together with the related concepts have been studied. Then the study covers the Crime Control Theory which is a disturbing trend affecting the Due Process Theory. These two theories are not identical, rather one is different in its approach from the other.

As in any research work in this study also the first thing to which attention is devoted is the theoretical conception and the second thing is the operational conception. The theoretical conception refers to the phenomenon of the steps which the officials concerned with the system of criminal justice follow in the matter of enforcing the system of criminal justice.

It includes the principles followed in other legal systems for managing the system of criminal justice. The operational conception however refers to the theory which is concerned specifically with the phenomenon of enforcement of law by the officials in India.

The discussion on the operational conception has the background of the initiatives taken by the State authorities for dealing with the increasing problems of public safety, public peace and public order. It is for the purpose of overcoming the new kinds of problems that various laws have been enacted modifying the system of law enforcement.

The object of this chapter therefore is to highlight in Section I the Theoretical Conception and in Section II the Operational Conception of the theory of due process is discussed. This particular section also contains a discussion relating to Crime Control Theory which shows a disturbing trend in the system of law enforcement which is different from the traditional theory of criminal justice and with which this researchwork is primarily concerned.

Section I – Theoretical Conception of Due Process of Law

1. Concept of Justice

Justice is defined as a moral stand commonly considered to be the end which law strives to achieve. The function of law generally is to adjust the conflicting interests of members of society. From this point of
view justice is defined as the harmonious blending of the selfish interest of man with the well being of the society.\(^{12}\)

(a) Civil Justice

Justice is broadly divided into two kinds, one civil and the other criminal. Civil Justice is distressed with the execution of individual human rights and is administered by the courts of civil jurisdiction by granting the remedies like the remedy of a damages, specific performance, injunction declaration etc.

(b) Criminal Justice:

The primary goals of criminal justice are the enforcement of criminal law, maintaining the social order, protecting the individuals from injustice. Criminal jurisdiction is done by awarding punishment to the wrong doer and by restoring property to the deserving person etc.

The concept of criminal justice refers to certain theoretical propositions which are implemented through the administrative apparatus. The theoretical propositions and the administrative machinery established for implementing the idea of criminal justice together constitute a system known as the system of criminal justice.\(^{13}\)

Keeping in view the objectives of criminal justice the basic functions of the System of Criminal Justice pertain to:

(i) determining whether a crime has been committed;

(ii) detecting possible offender;

(iii) apprehending the suspect;

(iv) providing for a review of evidence by the prosecutor to determine whether the case against the alleged offender merits prosecution;

(v) providing for a review of the prosecutor's decision by an independent agency such as a judge of the courts of justice;

(vi) providing for determination by a judge as to the guilt of the offender, and

(vii) sentencing the offender to punishment when he has been found guilty of the offence.\(^ {14}\)

Criminal Justice system is the system by which the Police, the Courts, the Prosecution and the
Prisons enforce the basic rules of society as expressed in its criminal law. These agencies discharge the most vital function of government. Without an effective system of criminal justice there can be no government in any real sense; anarchy prevails in the country and no man can be secured in his person or property by having an effective system of criminal justice. Government can operate in all its spheres of authority efficiently, and order can be maintained.

The Criminal Justice System of a country may be considered from at least three perspectives:

1. First, it can be considered as a normative system that is a body of legal rules expressing social values through prohibitions backed by penal sanctions against conduct viewed as wrongful or harmful. The normative system has its basics first in the Constitution which proclaims the objectives of securing justice to the people, and sanctions the establishment of courts to administer justice to the people.

2. Secondly, the Criminal Justice System can be regarded as an administrative system. This view comprehends the official apparatus for enforcing the Criminal Law including the Police and frontline enforcement agencies, prosecutorial authorities, the Courts, and the Prisons including the penal correctional facilities and services.

3. Third, Criminal Justice can be considered as a social system. In this perspective, defining and responding the criminal conduct involves all elements of society. This definition of criminal conduct includes not only the penal law enacted but the legislature by also the way in which the citizens interpret the provisions at various levels.

(c) Unlawful lack of prejudice organization and unlawful lack of prejudice custom:

Unlawful Justice Process is not the same thing as unlawful fairness association. The association of unlawful lack of prejudice is structure on certain institutions, and agencies that have the responsibility of applying the rules of Criminal Law. Criminal Justice Process on the other hand refers to the steps taken by various agencies of criminal justice system according to the procedure which is relevant to the system of criminal justice. The criminal justice process can be identified with the procedure pertaining to the actions of the agencies and institutions manning the system of criminal justice.

(d) The Framework of Criminal Justice System
According to Indian Constitution, Criminal Jurisdiction is governed by the Central Government and the States concurrently. There are two principal rules: the Indian disciplinary guidelines and the guidelines of unlawful exercise of 1973 which are embodied in law on crime expectation and fine. These system take first choice over any circumstances legislation, and the situation cannot change or modify them. The Central Government and the State Government both enacted the separate legislation to deal with criminal offences and accountability for work such as unlawful use of weapons and missiles, smuggling and fraud. However, all legislations all time leftovers assistant to the Constitution.

IPC was enacted in the year 1862 which was based on British criminal law. Pertinently, the code like British Criminal law deals with essential offence and penalty, applicable to tenant aliens and inhabitants in a similar way, and recognizes offence or crime committed by Indian National abroad.

Crimes and Offences are classified in Indian Panel Code under different groups: offences alongside the public order, the equipped military, the state, the person and possessions; and offences pertaining to religion, voting, safety, matrimony, and physical condition, decorum and ethics. offences can be identified in two different types i.e. cognizable or non cognizable, parallel to the difference between crimes and misdemeanours in lawful use in the United States.

Further, in the Panel Code an individual committing the crime can be punished by six kinds of punishment it includes well, penalty of possessions, easy custody, exact custody with firm labour, existence custody, and loss. A person can be jailed for breakdown to pay penalty, and up to three months’ introverted imprisonment can arise throughout unusual exact custody judgments. In case of demise and Life punishment Commutation is possible. Implementations are by lynching and are uncommon there were only three in 1993 and two in 1994 and are frequently retained for offences such as supporting murder and numerous massacres.

(e) Crime Control Institutions: The States and territories, are assigned responsibility by the Constitution for upholding rule and command, and all standard regulating-counting hesitation of scandalous is approved out by condition-height constabulary services. Further, the charter also authorizes the vital administration contribute in constabulary actions and association through governing the continuance of the Indian constabulary facility. The blending community facility assignment recruits Police officials during a aggressive countrywide assessment.

The Central government is authorized by the Constitution to maintain whatsoever powers are essential to protect countrywide safety. Further, as per the provisions of the charter, para armed powers can
be lawfully comprehensive to support and aid the conditions although merely if so appealed through the state government. Furthermore, the vital Government has mostly experimental some borders, remote occurrences, the middle government has organized its paramilitary components to preserve vital administration institutes over the objection of a State Government.

Generally Criminal cases are executed in unlock tryout, even though in some conditions congested trail occurs. Events survive for petition to superior patio:

In India, Court system is relatively independent and integrated. In Indian Court System the Supreme Court is at the apex, which has unique and original, advisory jurisdiction and appellate. Further under Supreme Court are eighteen High patio that supervise over the states and Unions Territories. Furthermore, High tribunal have administrative power over each and every subsidiary Court surrounded by their jurisdiction. In universal, these comprise numerous District tribunals headed by District judges, who in turn have a number of subsidiary judges under their control. Three sets of Magistrates are set up by Code of Criminal Procedure for the subsidiary offence tribunals. The first set encompasses of Executive judges, who are authorized by the responsibility of assisting the constabulary, issuing warrants, and formative appropriate route of exploit to deal with civic brutality. The moment set consists of official judges, who are basically examination law lords Sometimes, insignificant illegal cases are resolved in panchayat tribunals.

The Ministry of Home Affairs is the principal national-level organization which is empowered to deal with law enforcement, it also controls a huge amount of administration agencies and functions managed and governed by the innermost Government. The bureau is related with each and every matter related to the safeguarding of community harmony and instruction, the recruitment and management of the community armed forces, the supervision of Union Territories and the delineation of internal boundaries.

The Ministry Home Affairs not only supervise the Indian Police Service but also preserves numerous organizations and organizations handling with law and safety. The Police Division are not only responsible for the police in union Territories but also administered and manage the Institute of Criminology and Forensic Science and the National Police Academy. Further, The Central Bureau of Investigation are set up to investigate crimes which engage community bureaucrats or have implications for some states. The Borders Security Force are also administered and maintained by the Ministry Home Affairs.
The basic philosophy of organizations for constabulary services in India is established by Police Act of 1861, it is in effect with minor modifications. Subsequently, even though state-level constabulary services are split and may vary in conditions of the resources and type of tools, their examples of procedures and organization are clearly comparable.

The Home Secretary of the state supervise the Inspector General. Inspector General governs the police force of union territory, each state or nationwide resources of country. Further, the superintendent General governs numeral constabulary "series" which includes of three to six regions, maintained by representative superintendents General. District police headquarter is supervised by Superintendents. District superintendents comprise broad optional authority and are answerable for not only managing subsidiary constabulary places but also handling speciality constituents, such as equipment storehouses, illegal investigations disinterests, and armoires, and interchange constabulary. Several assistant district superintendents are appointed in various large districts.

In police stations, Constables assigned to carry out the majority of preventive police work. A district could be subdivided in several states depending on the numeral places there, additional it can be split-up into constabulary “spheres” to make easy the administration and administration from region to HQ. Generally, the urban areas such as Mumbai, New Delhi, Madras and Calcutta has a separate municipal forces supervised and administered by commissioner. The Ministry of Home Affairs has generated a guideline to maintain the units of volunteer Home Guards, this home guards assists constabulary in the states and union territories

Police forces are efficiently and functional divided in most states and territories under two categories civil ( unarmed) police and contingent of armed police. The first category of police staff i.e. civil police answer routine complaints, conduct investigations, patrol the streets and perform traffic duties. They second category of police staff i.e. armed contingent police staff normally carry tipped with iron or lathis-bamboo staffs weighted.

Further the delegations of equipped constabulary are separated into two various sets, the local equipped Constabulary and the district equipped Constabulary. The district- equipped Constabulary are allotted to police stations and execute safeguard and escort duties, they are controlled as along the lines of an defence forces infantry regiment.

The distinct armed contingents are maintained by specific states and are deploy for hit force for urgencies. Generally such elements are maintained as a portable equipped power administered under the
straight state run otherwise in the casing of district equipped constabulary (who are not as well capable of) as a power engaged by region controllers and usually working for insurrection-rule obligation.

Ever since the late 1980s, through the Indian Police Service system women have penetrated in larger integers into the superior echelons of the Indian constabulary. In 1972, Women police affairs were first used for the first time and a numeral of women hold key location in different numbers of state constabulary groups.

But, their total number, regardless or position is small. In New Delhi surreptitiously and uniformed women constabulary representatives, have specially been organized as the Anti-Eve-Teasing Squad, which clash for sexual annoyance against men (“Eves”). In Tamil Nadu, numerous women constabulary places have been recognized in to switch sex offences against women.

The Police authorities essentially are responsible for rule enforcement and running of commandment and command, safety, offence anticipation and offence recognition. Their role and performance is primarily governed by the following three major laws:

- IPC, 1860 and
- Indian verification Act, 1872

Separately from these, to provide a variety of exact requirements, numerous innovative rules are passed. As such several Special Laws - applicable to a particular subject i.e. Arms Act, Narcotics Drugs and Psychotropic Substances Act, etc-and Local Laws-applicable to a particular part of India-have been passed from time to time to meet the increasing offences avoidance requirements.

The legacy of punishments is a design of customery practices and directed by government institutions at upholding social control, deter bring down crime or sanctioning those who violate laws with criminal penalties and rehabilitation efforts.

1. In India, since the British model the criminal justice system has descended. The magistrates and the inn are self-governing although pains have been taken by a variety of politicians to dishearten the self-sufficiency of the magistrates. Since the age when Indira Gandhi's phrase as prime minister, judicial authorities are been treated in an arbitrary fashion by the executives.
Judges who had given the judgments that confronted the direction or rule in bureau have on incident been accepted over for support, for instance, less-than-desirable assignments are been given to unpopular judges. Since, the earnings and benefits of the magistrates have not kept up with salaries and perquisites in the confidential sector, very few numbers of proficient and competent associates of the lawful work have penetrated the lines of the superior magistrates.

2. In spite of the demur in the ability and integrity of the magistrates, measures for the safeguard of defendants were established, exclusive of the casing of discord-ragged regions, are usually experiential. The punitive belief holds the principles of stoking offence and restores illegal.

3. **Illegal rule and practice**

4. As per Indian charter, illegal authority is ruled by simultaneously to the Central administration and the States concurrently. There are two major acts: the IPC and the CRPC of 1973 who prevails rule on offence avoidance and penalty. These regulations acquire priority above any state legislation, and the situations cannot amend or modify it. The Central Government and the State Government both enacted the separate legislation to deal with criminal offences and legal responsibility operates as unlawful use of weapons and missiles, smuggling and bribery. However, all legislation residue subsidiary to the charter.

5. In the year 1862, IPC came into power found on British illegal commandment. Further, the system deals with essential offences and penalties, applicable to tenant aliens and nation in a similar way, and recognizes offence or crime committed by Indian Nationals.

6. Further, in the Panel Code an individual committing the crime can be punished by six kinds of punishment it includes penalties, forfeit of possessions, straightforward custody, exact custody with hard struggle, life custody, and loss. A human being can be jailed for collapse to pay penalties, and up to three months’ private incarceration can happen at some stage in odd thorough custody decisions. In case of Death and Life punishments Commutation is probable. Implementations are by killing and are rare-there were only three in 1993 and two in 1994—and are typically retained for offences such as supporting killing and numerous executes.

7. The Anglo-American pattern is a pattern which resembles the procedures in Courts of law. After
replacing a code dating from 1898 CRPC of 1973, came into power on April 1, 1974 the symbols supervise the machinery for punishment and prevention. The CRPComprises the conditions to expedite provide legal relief to the poor, the judicial process, prevent abuses and increase efficiency. However, the fundamental structure of the illegal righteousness organization was gone unaffected.

8. According to number of necessities of the CRPC1973 embodied, Constitution gives guarantees for protection to the accused. Person detained under the provision of special security legislation treatment of those will be departed from these norms. Furthermore for each and every practical purpose the execution of these norms differs broadly on the basis of the social background and the class of the accused.

Before instituting searches and seizing evidence a warrant must be secure by the police officials from a magistrate in most of the cases. A person who is taken into custody should be counselled to accuse brought alongside him, has the true to search for advice as well as should be presented earlier than a magistrate within twenty-four hours of seize. The accused person can be released on a bail by magistrate. Opponent is sheltered against self-incrimination throughout the trial and simply confession precise before judges are legally and officially applicable. Frequently illegal matters are agreed out in unlock examination, though in classified and inadequate conditions in blocked examination. There are proper and systematic procedures given in code for appeal to higher courts.

9. In India, Court system is relatively independent and integrated. In Indian Court System the Supreme Court is at the apex, which has unique and original, advisory jurisdiction and appellate. Further under Supreme Court are eighteen High tribunals that direct above the States and Unions Territories. In addition, High tribunals have managerial power over all and each subsidiary tribunals surrounded by their authority. In universal, these comprise numerous region tribunals skulled by region judges, who in turn have numerous subsidiary judges under their control.

Three sets of Magistrates are set up by Code of Criminal Procedure for the subsidiary illegal tribunals. The primary set consists of administrative judges, who are authorized by the responsibility of guiding the constabulary, granting authorizations, and formative appropriate route of deed to agreement with communal aggression. The second deposit comprises of official judges, who are mostly testing magistrates. Occasionally, trivial illegal cases are determined in panchayat tribunals.

I. Meaning & Definition of Due Process of Law

The phrase ‘due process of law’ generally stands for the safeguards available to individuals in relation to State Action. While in certain legal systems like the United States the safeguard of Due Process is guaranteed by the federal and state constitutions, in other legal systems it is considered, in some countries
on the basis of Common Law traditions and in certain countries as an aspect of Statutory requisite.

It is mandatory & legal requirement for state to respect Due process and state must esteem all of the lawful privileges that are preserved to a human being. Characteristically, "owed practice" means

Observe, usually printed, but a number of magistrates have resolute, in unusual situation, other kinds of perceive may be adequate. Perceive must offer adequate feature to completely notify the human being of the result or action that resolve an result on his/her privileges or possessions or human being.

1) Power to mourn (that being the accurate to criticize or to diverge with the parliamentary artist/unit which has conclusion construction power) and

2) Power to petition is a result if not pleased of the accusation system. Owed practice balances the control of rule of the ground and guards the human being from it. Whilst an administration troubles human being by passing defined route of the decree, accurately, this comprises a owed practice infringement, which affronts alongside the regulation of edict.

It is understood frequently that the Due process is limiting laws and legal proceedings so that judges - instead of legislators - may define and guarantee fundamental justice, righteousness, and autonomy. This inference has established controversial, and is parallel to the notion of normal righteousness, and bureaucratic righteousness worn in various former jurisdictions. This analysis of owed practice is from time to time uttered as an order that the administration must not be unjust to the populace or mistreat them physically.

Owed practice of rule is also defined as Conduct of legal proceedings strictly according to established principles and procedures, laid down to ensure fair trial for every accused. Because the infallibility of court judgments cannot be guaranteed, the legal system aims to secure this second-best but possible option.

The guaranty of due process means no accused is punished without an orderly and adequate procedure that is applicable uniformly in all cases. Under a due process, every accused gets an advance notice of trial, and a chance to be present, to be pay attention, and to shield himself or herself. It also includes the rights to:

(1) legal adviser

(2) confront and cross verify the witnesses
(3) refuse self-admitting confessional testimony, and

(4) crime should be proven by proof there shouldn't be an iota of doubt.  

The significance of the theory of Due Process is that it is based on the principles of Natural Law and has a long chequered history starting with the Magna Carta of the 12th century AD. It was adopted by the United States of America and several other countries since it was Natural Law compliant and in the modern period it won the approval of many legal systems of the world.

1. Related Concepts

(a) Fair Trial & Due Process

Due process and the right to fair trial lie at the heart of our common law system of justice. For centuries, they have expressed the core idea that every person is entitled to the due process of law, to confront the validity of their custody and to a just enquiry by the sovereign and neutral tribunal.

Today, the same guarantees are contained in object 5 (the power to autonomy) and Article 6 (the power to a just examination) of the European reunion on individual privileges, in Articles 9 and 14 of the intercontinental convention on public and supporting privileges, and in the edict of every democratic country throughout the world. Despite this, these rights face constant erosion by disproportionate legislation.

Since its formation on 1957, JUSTICE has been one of the foremost defenders of the power to a just assessment in UK law – for many years defending the rights of persons wrongly convicted of criminal offences. More recently, we have been active in arguing for fair trial principles in a wide range of contexts, from asylum, counter-terrorism, and criminal justice.

The phrase ‘owed practice of rule’ had its origin in the Common Law of England and stood for the fundamental principles of liberty and justice. It meant that Government should not act in a manner that is arbitrary, capricious or unreasonable. In other words, it was a safeguard available to the individuals against arbitrary actions of administrative agencies.

(b) Elementary righteousness

Elementary righteousness is a lawful phrase that denotes and brings about a flexible and dynamic notion of transparency & justice beneath the direction of righteousness and its actions, while ethics of essential righteousness are precise lawful doctrine that decree "noteworthy communal consent" as "essential
to the mode in which the legal system ought fairly to operate."

These principles may stipulate basic procedural rights afforded to anyone facing an adjudicative process or procedure that deprives persons fundamentals of freedoms, and certain substantive standards related to the rule of law that regulate the actions of the state (e.g., the rule against unclear or vague laws).

The degree of protection dictated by these standards and procedural rights vary in accordance with the precise context, involving a contextual analysis of the affected person's interests. In other words, the more a person's rights or interests are adversely affected, the more procedural or substantive protections must be afforded to that person in order to respect the principles of fundamental justice.

A legislative or administrative framework that respects the principles of fundamental justice, as such, must be fundamentally fair to the person affected, but does not necessarily have to strike the "right balance" between individual and societal interests in general.\textsuperscript{19}

1. Due Process of Law in American Legal System

Like the several other principles of English Law the principle of Due Process of Law was adopted in the American Constitution through the First Amendment, which says, ‘Congress shall make no law affecting the right to life, liberty and property without due process of law’.

While the First Amendment introduced the safeguard of Due Process against the deeds of the centralized establishment, the Fourteenth modification to the Constitution introduced the safeguard of Due Process against the action of the authorities of the States. Thus, both the federal as well as the State authorities have been subjected to the principle of Due Process for the reason of protecting the existence, autonomy and possessions.

Therefore the Fifth amendment & the the Fourteenth one made to the USA charter each contains a owed practice article. The owed practice article acts as a safetynet from quirky rejection of living, autonomy, or possessions by the state outside the approval of rule.\textsuperscript{16} The superlative tribunal of the USA understands the articles as as long as four shields: owed practice in system (in illegal & social actions), substantive owed method, an exclusion adjacent to unambiguous blurred rules, and as the contributor for the enclosure of the invoice of civil liberties.

The American Supreme Court perceives the phrase as as long as four defends: bureaucratic owed practice (illegal & public actions), substantive owed course, inhibit unclear rules, and as the means of transport for the assimilation of the list of privileges. An analysis of the principles arising from the theory of.
Due Process as adopted in the American Legal System may be presented as follows

### 1. Procedural due process

This shield expands to all administration events that can effect in personality's denial, whether social or illegal in scenery, as of parole contravention enquiry to organizational investigation in relation to the facilities from government and entitlements to exacerbated criminal cases. The article "Some Kind of Hearing" written by Judge Henry Friendly created a list of basic due process rights "that remains highly influential, as to both content and relative priority." These rights, which apply equally to civil due process and criminal due process, are:

1. An impartial tribunal.
2. Observe the planned deed and the justification stated for it.
3. Prospect to show basis why the planned deed should not be occupied.
4. The power in attendance facts, as well as the power to call spectators.
5. The power to know contrasting facts.
6. The power to grill difficult spectators.
7. A conclusion supported completely on the confirmation accessible.
8. Prospects to symbolize by guidance.
9. Obligation that the tribunal arrange an evidence of the facts accessible.
10. Obligation that the committee arrange printed conclusion of declaration and grounds for its conclusion.

**a) Civil due process**

At a primary stage, bureaucratic owed practice is essentially supports on the hypothesis of "primary fairy." For example, in 1934, the USA superlative tribunal thought that owed practice is dishonoured "if a statute or exercise affronts some benchmark of righteousness so fixed in the ethics and customs of our nation as to be considered as primary." As understood by the tribunals, it encompass an persons right to be adequately advised of dealings or alleges, at these measures the occasion to be pay attention to, and that the board or
human being building the last decision over the measures be fair observe to the subject ahead of them. Or, to put it complementary essentially, where human being is in front of a scarcity of independence, living or assets, procedural scientific owed course permits that he or she is allowed to adequate observe, a examination, and balanced and impartial adjudicator.

Balancing test was formulated by the Supreme Court to establish the obstinacy with which the desires of scientific bureaucratic owed practice must be related to a precise scarcity, for the evident cause that agreement such requests in the normally fair way for smooth mostly small denial would communicate the apparatus of government i.e. regime to a arrest.

The tribunal place along out the analysis as trail: Acknowledgment of the accurate order of owed practice usually requests manifestation of three unlike features: first, the confidential attention that will be prejudiced from beginning to end the administrator act.

Secondly, the danger of an flawed scarcity of such awareness all the way through the practice used, and the realistic worth, if any, of complementary or substitution bureaucratic protection; and, in the end, the administration attention, together with the principle implicated and the financial and organizational impediment that the added or replacement bureaucratic obligation would require."  

bureaucratic owed practice acts as a primary and very important function in the development of the by law of individual command, in the sense that it is fundamentally unbalanced for the court apparatus of a state to take hold of gone assets of an human being who has no tie or alliance to it whatever. The significant section of U.S. legitimate act is consequently focussed to what grouping of associations to a country are plenty for that state’s accusation of influence over a allien to comport with scientific owed practice.

Constitutional dimension has been introduced as the requirement of a neutral judge raises the query if a arbitrator should release himself or herself from a casing. Peculiarly, the superlative tribunal has settled that in unusual situation, of the Fourteenth modification, the Due Process Clause compose serving on adjudicator to recues himself in relation of a actual or potential mix up of interest. For instance, in the year 2009 June 8, in the case Caperton v. A. T. Massey Coal Co. (2009), the verdict of patio that a scrupulous righteousness of the superlative tribunal of petition of West Virginia cannot take part in any case relating with a foremost benefactor to his voting to that tribunal.

Crime Control Theory
As against the Theory of Due Process of Law there emerged the Theory of Crime Control in a different context altogether which considered the interests of State as of primary concern and gave secondary importance to the rights of the individuals. This particular theory was followed at the cost of sacrificing the rights and interests of the individuals at the altar of the State interests.

This particular theory was adopted by the authorities in England when the Star Chamber took charge of administering justice in regard to certain offences. Under this theory what was of primary importance was not the rights of the individuals but the interests of the State for its own survival and for maintaining its own authority against everyone.

Although the Star Chamber was abolished the Theory of Crime Control has survived in the form of arbitrary laws enacted in the name of State sovereignty. The laws so enacted by the legislative branch of the State are implemented by the Executive and are honored by the Judicial branch to overcome any threat to the existence of the state. This is more particularly in the context of crimes relating to public safety, public order and public health.

Laws on Crimes of this type are enacted and implemented by the organs functioning even at the international level; therefore we find laws enacted with regard to international crimes, international human trafficking, international currency trafficking etc. which follow the theory of crime control and ignore the basic attribute of the theory of Due Process of law. The net result of such a legislation at the national and international levels is that it has the tendency of causing a setback to the ancient principle of owed practice of act and affecting the system of illegal righteousness.

**Section II – Operational Conception of Due Process Theory**

**The Indian Context of Due Process of Law Theory**

Being a part of the British system of administration in the past India inherited most of the English principles; one such principle inherited by our country was the Theory of Due Process which was followed for quite a long time when India was a British Colony, it was continued even after Independence and is still a part of the Legal System of our country.

But owing to changes in the conditions of society there has been a change and there is the e
introduction of Crime Control Theory in most of the matters of dealing with the crime problem.

The situation therefore has changed ever since the coming into force of the Constitution and a change in the socio-political set up. But what we have to note is that here is the concept of Due Process of Law very much a part of the legal system. For example, the Preamble of the Constitution declares the high ideals for which the Constitution has been adopted.

These high ideals are to the effect that justice, liberty, equality and fraternity will be the goal of the new Republic. Among the specific provisions enacted in the Constitution are the provisions dealing with Life, Liberty and Property. And the State is prohibited from depriving the citizens of their invaluable rights without the due process of law. Thus, Due process is an aspect of Rule of Law and a very significant principle of our constitutional democracy.

The principle of Due Process of Law is applicable to several aspects of the State Administration. The laws that are enacted by the State, the implementation of the laws that is undertaken by the Executive and the judicial action in determining the rights and duties of the individuals must all conform to the principle of Due Process of law.

While substantive due process requires valid and reasonable laws to be enacted for application to the people in various circumstances, the procedural due process requires the methods of administering the laws also to be just, fair and reasonable. We have in our country Due Process of Law in both the forms, i.e., the substantive Due Process and Procedural Due Process.

For judicial process to be in place:

1) There must be procedural as well as substantive laws passed by legislature.
2) There must be courts comprising duly qualified judges,
3) There must be infrastructure and ministerial staff to keep record of every day steps and Progress
4) There must be some kind of technology to proceed with the procedure. The words Judicial Process and the Due Process need to be explained before proceeding further with the discussion. No Judicial Process in the world can work without laws. Therefore legal process or process of making laws must precede the judicial process. But here we are concerned with emergent trends in judicial process only. The trends are again classified in terms legal knowledge, technology of courtroom, electronic case management.

When it comes to due process law, it is police versus public. The police becomes the arm of the repressive
state and the public becomes intimidated threatened oppressed mass of subjects. In words of Dr. S. Radhakrishnan even a democracy can be tyrannical at times when elected representatives get busy in retaining power for long term. How to implement Programs, How to chalk out policies, and to retain power out of these three the last one precedes the other two. The state then has lesser and lesser regard for due process. Unfortunately India has reached this stage. We can say the emerging trend is India has such judicial process through which it is impossible to come out unscathed. There are two parallel judicial processes.

First one is the routine courts and routine laws. The second one has special laws, special investigating agencies and special courts that mostly function from jails. On 17-11-2012 when condemned Ajmal Kasab was hanged, the celebrity criminal lawyer Ujwal Nikam said “for one decade I was functioning 9 AM to 5 PM from the premises of Arthur Road Prison.”

The concept of Judicial Process While delivering inaugural address at the National Conference on “Judicial Process Emerging Trends” on 29th September 2012 at Venkateshwara University Tirupati Justice L. Narsimha Reddy A.P. High Court dwelt elaborately on judicial process. Justice Reddy observed that Judicial Process is the complex procedure of hearing or trial of a case by the judge having jurisdiction to try and the litigant having locus standing to knock the doors of the court.

The judicial process sets in when the state, the citizen, or the legal person created by law viz. an Institution registered under the Societies Act, a Public Trust registered under the Public Trust Act, .a functioning Society index under the accommodating Act or a Corporation registered under the Indian Companies Act sets in motion the trial by filing a plaint/, suit or complaint in the court of law. Judicial process is basically whole complex phenomenon on of court working.

The judicial process is not confined to what the judges alone do but it includes what the clerical staff the bailiff and the advocates who are officials of the court together do. The logical question will arise as to whether the Quasi Judicial proceedings are also included in the judicial process. The argument of the research scholar would be that all quasi judicial process including arbitration, mediation and conciliation under respective laws must be brought in the arena of the Judicial Process.

What Due Process demands is that every action of the State authorities must be based on a valid law. It is necessary that the taking of somebody’s property in public interest may be there but it must be within the authority of law. While editorial of the instrument of administration of India takes care of Life and Liberty, Article 300-A. takes care of property.
Practice recognized by act reveal in Article 21 of the Constitution of India embodies “Due Process”
Some jurists are of the opinion that American”Due Process” and Indian “Procedure established by law” are
different in guarding life and liberty. For judicial process to occur:

1) There must be procedural as well as substantive laws passed by legislature,
2) There must be courts comprising duly qualified judges,
3) There must be infrastructure and ministerial staff to keep record of every day steps and Progress
4) There must be some kind of technology to proceed with the procedure.