



Critical Analysis Of Crime Control Model And Due Process Model: In The Context Of Indian Criminal Justice System

¹Inderjeet Dagar, ²Abhishek Mourya

¹Research Scholar, Faculty of Law, University of Delhi

²Research scholar, Faculty of Law, University of Delhi

Abstract

The criminal justice system can be quite complex, especially in an attempt to punish criminals unfairly. The society hopes that the system will be efficient and expeditious, but the protection of individual rights and justice will be largely distributed. Ultimately, balancing these goals is ideal, but controlling crime and punishing criminals quickly can be challenging, while also ensuring that our constitutional rights are not violated while providing justice. There are two more or less separable complexes of need to be investigated as one approaches the central question of the limits of criminal law. One complex of issues concern called the ideology of the criminal law, such as questions about the nature and purposes of criminal punishment.

The major premise of this article is that the shape of the criminal process has a significant impact on questions about the wise use of criminal approval and how these two models impact the Indian Criminal Justice System.

Keywords : Crime Control Model, Due Process Model, Indian Criminal Justice System, Legal Framework, Justice Administration

Introduction

The Indian criminal justice system is a complex framework designed to maintain law and order while ensuring justice for all citizens. Within this system, two prominent models of justice—Crime Control and Due Process—play crucial roles in shaping legal policies and practices. The Crime Control Model emphasizes the swift and effective suppression of criminal activity, prioritizing public safety and order. Advocates of this model argue that a strong focus on law enforcement and rapid prosecution is essential to deter crime and protect society. Conversely, the Due Process Model prioritizes individual rights and legal protections, advocating for the fair treatment of all individuals within the justice system. This model emphasizes the need for legal safeguards to prevent wrongful convictions and ensure that justice is administered fairly.

In the context of India, these two models often intersect and clash, leading to critical discussions about their implications for justice delivery. The balancing act between ensuring public safety and protecting individual rights presents significant challenges for policymakers and law enforcement agencies. This analysis aims to critically evaluate the strengths and weaknesses of both models within the Indian context, exploring how they influence legislative practices, judicial outcomes, and societal perceptions of justice. By examining case studies and legal frameworks, this study seeks to contribute to a deeper understanding of how the Crime Control and Due Process Models coexist and compete within India's evolving criminal justice landscape.

Two Models of the Criminal Process

1. Crime Control Model

The value system that underlies the **Crime Control Model** is based on the proposition that the repression of criminal conduct is by the most important function to be performed by the criminal process. The failure of law enforcement to bring criminal conduct under tight control is viewed as leading to the breakdown of public order and thence to the disappearance of an important condition of human free dom. If the laws go unenforced, which is to say, if it is perceived that there is a high percentage of failure to apprehend and convict in criminal process, a general disregard for legal controls tends to develop. The law-abiding citizen then becomes the victim of all sorts of unjustifiable invasions of his interests.

The model, in order to operate successfully, must produce a high rate of apprehension and conviction and must do so in a context where the magnitudes being dealt with are very large, and the resources for dealing with them are very limited. There must then be a premium on speed and finality. Speed, in turn, depends on informality and on uniformity; finality depends on minimizing the occasions for challenge. The process must not be cluttered with ceremonious rituals that do not advance the progress of a case. Facts can be established more quickly through interrogation in a police station than through the formal process of examination and cross-examination in a court; it follows that extrajudicial processes should be preferred to judicial processes, informal to formal operations.

The criminal process, on this model, is seen as a screening process in which each successive stage-prearrest, investigation, arrest investigation, preparation for trial, trial or entry of conviction, and disposition-involves a series of rout whose success is gauged primarily by their tendency to pass the case along to a successful conclusion i.e. one that throws off at an early stage those cases in which it appears unlikely that the apprehended is an offender and then secures, as expeditious possible, the conviction of the rest with a minimum of occasion for challenge, let alone post audit.

The key to the operation of the model as to those who are not screened out is call a presumption of guilt. The presumption of guilt allows the Crime Control Model to deal efficiency with large numbers. The supposition is that the screening processes operated by police and prosecutors are reliable indicators of probable guilt. The presumption of guilt is not of course a thing. Nor is it even a rule of law in the usual sense. In Crime Control Model, the concept of presumption of guilt accelerate the rate of conviction. The **Crime Control Model** focuses on being an efficient system, in which the most important function is to suppress and control crime to

ensure that society is safe and public order. Under this model, controlling crime is more important for personal freedom. This model is a more conservative perspective. In order to protect society and ensure that individuals feel free from the threat of crime, the crime control model will advocate faster and harsher punishment for criminals. It proceeds with an official presumption that an individual charged with an offence is possibly guilty of it or of some other offence. And guilty people receive punishment through a reasonable, and severe, correctional system. With an offence is possibly guilty of it or of some other offence. This model finds connection between rate of convictions and domestic tranquillity and the general welfare.

2. Due Process Model

If the Crime Control Model resembles an assembly line, the **Due Process Model** looks very much like an obstacle course. Each successive stages is designed to present formidable impediments to carrying the accused any further along in the process. Its ideology is not the converse of that underlying the Crime Control Model. It does not deny the social desirability of repressing crime, although its critics have been known to claim so. Its ideology is composed of a complex of ideas, some of them based on judgements about the efficacy of crime control devices.

The Due Process Model encounters its rival on the Crime Control Model's own ground in respect to the reliability of factfinding processes. The Crime Control Model, as we have suggested in a preliminary way, places heavy reliance on the ability of investigative and prosecutorial officers, acting in an informal setting in which distinctive skills are given full sway, to elicit and reconstruct a tolerably accurate account of what actually took place in an alleged criminal event. The Due Process Model rejects this premise and substitute for it a view of informal, non-adjudicative factfinding that stresses the possibility of error: people are notoriously poor observers of disturbing events-the more emotion-arousing the context, the greater the possibility that recollection will be incorrect; confessions and admissions by persons in police custody may be induced by physical or psychological coercion, so that the police end up hearing what the suspect thinks they want to hear rather than the truth; witnesses be animated by a bias or interest that no one would trouble to discover except one specially charged with protecting the interests of accused-which the police are not. Considerations of this kind all lead to the rejection of informal factfinding processes as definitive of factual guilt and to the insistence on formal, adjudicative, adversary factfinding processes in which the factual case against the accused is publicly heard by an impartial tribunal and is evaluated only after the accused has had a full opportunity to discredit the case against him. Even then the distrust of factfinding processes that animates the Due Process Model is not dissipated. In the pure Due Process Model the answer would be at least as long as there is an allegation of factual error that has not received an adjudicative hearing in a factfinding context. The demand for finality is thus very low in the Due Process.

The **Due Process Model** focuses on having a just and fair criminal justice system for all and a system that does not infringe upon constitutional rights. Further, this model would argue that the system should be more like an 'obstacle course', rather than an 'assembly line.' The protection of individual rights and freedoms is of utmost importance and has often be aligned more with a liberal perspective.

Professor Packer examines the process through two models,¹ the crime control model, which he analogizes to an assembly line or conveyor belt, " more administrative and managerial than adversary and judicial and the judicially oriented due process model, which more resembles an obstacle course than an assembly line. He concludes that while the criminal process now fairly closely follows the dictates of the crime control model, the trend is toward the adoption of the due process model.

Critical Analysis of Indian Criminal Justice System

Indian Criminal Justice System adopted mixed values of both models. But in the beginning founding fathers not in the favour of Due Process Model. The Constituent Assembly rejected the Due Process Clause and the judicial approach was also in favour of Crime Control Model. In *A.K. Gopalan v. State of Madras case*,² held that No man's liberty would be worthy of its name if it can be violated with impunity by any wrongdoer and if his property or possessions could be preyed upon a thief or murderer. The society, therefore has got to exercise certain powers for the protection of these liberties and to arrest, search, imprison and punish those who break the law. The post Maneka period, witnessed a number of liberal criminal holdings in various areas. For example, the court has held fundamental right to personal liberty includes the right to free legal aid, right to speedy trial, right to dignified treatment, etc. During the post -Maneka period, the due process gained ascendancy. Bhagwati CJI in an article observed that²⁹ "by and large the summit court in our country has through progressive and humanistic interpretation enlarged the rights of the suspect accused."

The Indian Criminal Justice System followed both models. In *Kapil Kumar Beri case*³, the high court acquitted the appellant on the ground that prosecution not prove beyond reasonable doubt after the completion of 10 years of conviction of district court. The approach of high court shows the values of Due Process Model but in the initial period, the District Court, despite not having enough evidence and sentenced him, that's the crime control model. *Mukesh & anr v. State for Nct Delhi & ors. case*⁴ also the case that shows Due Process Model, in this case, Court punished Juvenile according to law not according his crime's gravity and societal pressure. In India, we presume that accused person is innocent and victim should prove that accused is guilty of such offence beyond reasonable doubt. But there is also a Crime control model that shows our society still need that people should be afraid while doing wrong. In *Nambi Narayana case*⁵ judiciary adopted due process Model and compensate the victim of miscarriage of justice, but still there are so many cases where ignored the presumption of innocence factor because of crime control model. We are adopted both model's value NCRB report shows that 68.2% prisoners are undertrials that means our machinery still believe in crime control model. On the contrary, some sections, for example section 41A, 41D, 49 etc that gives right to accused that section adopted the due process value.

¹ Herbert L. Packer Two Models of the Criminal Process, 113 U. Pa. L. Rev. 1 (1964).

² AIR 1950 SC 27

³ 2018 SCC OnLine Del 13023

⁴ CRIMINAL APPEAL NOS. 609-610 OF 2017

⁵ CIVIL APPEAL NOS. 6637-6638 of 2018

Three legislative/judicial instances from last one decade in India

- 1.) In December 2019, in *Anokhilal v. State of Madhya Pradesh*⁶, the Supreme Court of India overturned a conviction and death sentence ordered by the trial court. The reason that the Supreme Court found that the accused's right to legal aid was violated. The short facts are as follows. A lawyer was appointed by the Legal Services Authority for the accused a day before the hearing for framing of charges. On the date of the hearing, the lawyer was not present, and a new lawyer was appointed immediately by the Legal Services Authority. However, on the same day, charges were framed under Sections 302, 363, 366, 376(2)(f) and 377 of the Indian Penal Code, 1860 and Sections 4, 5 and 6 of the POCSO Act, 2012. While remanding the case back to the trial court for fresh consideration, the Supreme Court re-stated some principles on the right to free legal aid. In particular, it held that where a lawyer is appointed as an amicus to represent an undefended accused, reasonable time of at least 7 days should be provided for preparation, and the counsel should be permitted to have meetings and discussions with the accused. In this case judiciary adopted Due Process Model.
- 2.) The Legislature adopted the crime control model in the amendment of UAPA, 1967. The UAPA, 1967 is meant to outlaw and penalize unlawful and terrorist activities, which pose a threat to the integrity and sovereignty of India. It also provides wide-ranging powers to the Central Government to designate organizations as terrorist organizations and also prescribes the penalties for taking part in the activities of such organizations. In 2019, the Parliament carried out certain amendments to the Act ('Amendment') and the same was notified on 8 August. The most significant change brought about by the Amendment was that it altered Section 35 and gave the Central Government the power to notify an individual as a 'terrorist' under Schedule IV of the Act. Prior to the Amendment, only organizations could have been designated this way and individuals were not covered. Detractors of the Amendment argue that it gives arbitrary powers to the executive and violates an individual's right to due process of law, right to dissent, and right to reputation.
- 3.) In *Harsh Mander & Anr v. Union of India* case⁷, The court observed that criminalising begging is a wrong approach to deal with the underlying causes of the problem. The court observed: "If we want to eradicate begging, artificial means to make beggars invisible will not suffice. A move to criminalise them will make them invisible without addressing the root causes of the problem. The root cause is poverty, which has many structural reasons: no access to education, social protection, discrimination based on caste and ethnicity, landlessness, physical and mental challenges, and isolation." This judgment is landmark because in decriminalising begging, the court has vindicated constitutional conscience and validated the idea that poverty is a human rights issue, and the denial of the right to life, livelihood and dignity to the poor is a patent violation of fundamental rights that cannot and should not be tolerated in a country governed by rule of law. This judgement followed the concept of Due Process Model.

⁶ 2019 SCC OnLine SC 1700

⁷ AIR 2018 Del 188

4.) In *Arup Bhuyan v. State of Assam case*⁸, Court observe that section 3(5) of TADA cannot be read literally otherwise it will violate Articles 19 and 21 of the Constitution. It has to be read in the light of our observations made above. Hence, mere membership of a banned organisation will not make a person a criminal unless he resorts to violence or incites people to violence or creates public disorder by violence or incitement to violence. The approach of the Supreme Court is Due Process.

Amendment of section 31A of NDPS (amendment) Act, 2014 change the gravity of section. The Supreme Court struck down the section 66A of the IT Act, 2000 that shows the Due process.



⁸ (2011) 3 SCC 377