TOWARDS CRIME CONTROL MODEL

NOWADAYS, ADMINISTRATION of criminal justice seems to be in a state of confusion, crisis and at the verge of collapse. Confusion is because of plurality about the theories of punishment; crisis is owing to huge arrears of cases and unsatisfactory trials; at the verge of collapse due to shockingly high rate of acquittals and phenomenal increase in crime rate in the society. There are three components of administration of criminal justice, *viz*, state, accused and victim, each requiring due consideration. The triangulization of criminal justice raises many delicate issues. The significant developments, which have taken place in victimology, have brought at the forefront the question of balancing the interests of accused and those of the victim.

Liberal penological philosophies and modern constitutional developments about the rights and dignity of the accused and the security of the society have widened the gap between the liberty of individual and security of the society. On penological spectrum, about the goal of punishment, problem is experienced between retribution and deterrence on one hand and reformation and rehabilitation on the other hand. In order to award appropriate punishment to safeguard the interests of the accused and of the society different models, such as due process model and crime control model, have been advocated. In the United States, the criminal law explosion of 1960's swung the pendulum in favour of due process model but later on Berger court made retreat therefrom and moved towards crime control model. The objective of the present paper is to focus attention on the operation of these models in India and examine whether judiciary has moved towards the crime control model.

Different models: A referential description

In the US, there are two models, due process model or adversary model and crime control model or bureaucratic model, which guide the administration of criminal justice. According to Blumberg, under due process model the justice system seeks to develop social, legal and organizational structures, which will filter out law violators and also provide an avenue of possible freedom to those who are innocent or casual law breakers.[1] The due process model lends emphasis on

1. See, S.N. Sharma, *Personal Liberty under Indian Constitution* 10-11 (1991).

comparing the respective claims of the accused and state with the help of a fair trial by an impartial tribunal. Presumption of innocence, exclusion of coercion and respect to individual's rights etc. are some of the characteristics of the model. Accuracy over efficiency is preferred and state is not allowed to infringe individual's rights but it hampers the efficiency of criminal process in prevention and suppression of crime.

On the other hand, crime control or bureaucratic model emphasises efficiency, finality and preservation of order. It proceeds with an official presumption that an individual charged with an offence is possibly guilty of it or of some other offence. This model finds connection between rate of convictions and domestic tranquility and the general welfare. While using due process model and crime control model[2], Herbert Packer observes[3]:

> The kind of criminal process that we have is profoundly affected by a series of competing value choices which consciously or unconsciously serve to resolve tensions that arise in the system. These values represent polar extremes which in real life are subject to almost infinite modulation and compromise, but the extremes can be identified. The choice basically is between what I have termed the crime control and due process models.

According to David Fogel, "Justice Model" is an attempt to bring about a greater degree of compatibility among the various elements constituting the entire criminal justice process. To him, two different philosophies operate within the criminal justice system — volitional model and justice model. According to volitional model, an adult offender is responsible for his own actions and accordingly ought to be held accountable under the law. Fogel's justice model accepts that prisons do not rehabilitate or cure. To him, for the functioning of correctional part of the criminal justice process, offenders must be treated during the entire process as responsible as well as accountable.[4]

There are various models of punishment and criminal justice administration. These conceptual aspects have a bearing on trial, sentencing, etc., of the accused. The aims of sentencing are retribution, deterrence, reformation, protection, etc., and modern sentencing policy reflects a combination of several or all of these aims. The retributive element shows public revulsion from the offence and punishment to

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2. Herbert Packer, *The Limits of Criminal Sanction* 149 (1968); Griffith says that Packer models are really one 'Battle Model' and he suggests 'Family Model' where rehabilitative ideals dominate. See, Griffiths, "Ideology in Criminal Procedure or a Third Model of the Criminal Process" 79 *YLJ* 359(1970).

3. Crossman & Wells, *Constitutional Law & Judicial Policy Making* 472 (1972).

4. *Available at* http://www.lib.niu.edu./ipo/1976/11760214 html

the offender for his wrongful conduct. Deterrent sentences aim at deterring not only the actual offender but also potential offenders from breaking the law. The importance of reformation is well shown by modern legislations. In *Halsbury's Law of England*, it is noticed that the protection of society is often the overriding consideration. In addition reparation is becoming an important objective.[5]

Crime control model in US

In the US, the concern for law and order grew as a result of liberal judicial policy.[6] By 1960, the US Supreme Court actively probed administration of criminal justice and the concern for the rights of the accused, which is the nucleus of due process model, received maximum support from Warren court.[7] Although no empirical connection between liberal criminal holdings and crime rate was established, yet the judges were criticized for *coddling criminals* and *handcuffing the police* and also blamed for breakdown of law and order.[8] The decisions like *Miranda*, which received major publicity, were strongly opposed by public opinion. The role of the Supreme Court became a major issue in the 1968 presidential campaign and the elected president promised to strike a balance between the *forces of peace* and *forces of crime*. President Nixon appointed strict constructionist judges to reverse the trend which had gone in favour of criminals. Congress, too, was unhappy with liberal judicial holdings. The Omnibus Crime Statutes of 1968 and 1970 intended to dilute certain decisions of the US Supreme Court.The three sections of 1968 bill were against the holdings of *Mallory* v. *U.S.*,[9] *Miranda* v. *Arizona*[10] and *U.S.* v. *Wade*.[11] The Senate Judiciary Committee found the presence of causal relationship between the procedural reforms and increasing crime rates and opined that it had hampered the effort of law enforcement official.

Some of the police officials felt that judicial approach had made the task of apprehending the criminal difficult. The *Miranda* decision was criticized by the law enforcement officials for its interference with the work of apprehending criminals. Some of the judges of the Supreme Court, such as, Byron White Harlan, Berger etc. were dissatisfied with

5 . *Halsbury's Law of England* 895(4th ed. 1990); see also A. Lakshminath, "Criminal Justice in India: Primitivism to Post Modernism" 48 *JILI* 26-56(2006).

6. For crime control and due process model in the US, see *supra* note 2 at 9-17.

7. See Samuel Hendel (Ed.), *Bishop and Hendel's Basic Issues of American Democracy*, 338 (7th ed. 1973).

8. *Supra* note 3 at 474.

9. 354 US 499: I LEd 2d 1479 (1957).

10. 384 US 436: 16 L Ed 2d 694 (1966).

11. 388 US 218:18 LEd 2d 1149 (1967).

the too liberal norms set by their brother judges. Berger J in his dissenting opinion in *Bivens* v. *Six Unknown named Agents*[12] emphasized the need for preferring security value. Similarly Black J in *Biven* v. *New York*[13] felt that the country was painfully realizing that the evidence of crime was difficult to secure.

The court prohibited the use of third degree methods to extract confession from the accused. It held that confession secured by physical coercion, mental pressure, psychological plays and trick were inadmissible as evidence to support conviction. In *Escobedo*, a confession was secured from an accused by misleading that his co-conspirator had confessed. The court by majority upturned the conviction but Harlan and White JJ dissented. Harlan J observed:[14]

> I think that the rule announced today is most ill conceived and that it seriously and unjustifiably fetters perfectly legitimate methods of law enforcement.

In *Miranda*, the Supreme Court reversed the conviction of the accused charged with the offence of kidnapping and rape of an eighteen year old girl on the ground that confession had been secured without observing the constitutionally required warning. In his dissent Harlan J characterized it to be dangerous experimentation and said that society had paid a heavy price for it. White J, who had filed objection in *Escobedo* against the majority decision about crippling the law enforcement and rendering the task difficult in his pungent dissent in the instant case warned:[15]

> Without the reasonably effective performance of the task of preventing private violence and retaliation it is idle to talk about human dignity and civilized values.

Byron White J has generally been critical of due process model as he sarcastically observed in *Massiah* v. *U.S*[16] that law enforcement may have the elements of a contest but it is not game. The judicial adherence to due process model is abundant in certain areas, such as, capital sentence, prisoner rights, speedy trials, bail, right to privacy etc.[17]

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12. (403) US 388: 29 L Ed 2d 619 (1971).
13. 388 US 41: 18 L Ed 2d 1040 (1967).
14. 12 L Ed 2d 977 at 987 (1964); see also Paul G Kauper, *Constitutional Law: Cases & Material* 778(1966).
15. 16 L Ed 2d 694 at 761 (1966).
16. !2 L Ed 2d 246 (1964).
17. See generally, Prichett, *The American Constitution* (1971).

Later on, the court made a retreat from due process and limited the scope of *Miranda* ruling in *Kirby* v. *Illinois*[18] and *Harris* v. *New York*.[19] The court showed preference to crime control model in certain other cases also.[20] It has been rightly commented:[21]

> In the beginning the Court tipped the balance in favour of criminals (Due process model) but criticism from different quarters forced it to modify its approach slightly in certain areas. The message is clear that …the societal interest in security cannot be overlooked.

Thus, it becomes clear that the Supreme Court in the US has made a retreat from due process model.

Legal position in India

In India, the position from the very beginning was not in favour of due process model. During the colonial rule, the insistence was on police functions of state and there was no scope for due process model as crime control model was heavily preferred. The early post independence developments were also not in favour of due process model. The rejection of due process clause in the Constituent Assembly, partition riots, invasion of Kashmir by Pakistan, the Rajkar movement in Hyderabad, the communist upsurge in some parts of the country, assassination of Gandhiji, the demand of Hindu Rashtra, Chinese aggression, Pakistan attacks etc. never created conditions for trial of due process model.[22]

The judicial approach was also in favour of crime control model. In *A.K. Gopalan* v. *State of Madras*[23] Mukherjea J observed: [24]

> 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 maurader.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.

Das J in his dissenting opinion further highlighted the significance of crime control model by conceding that a law would be valid even if

18. 406 US 682 (1972).
19. 401 US 222: 22 L Ed 2d 1(1971).
20. *Lego* v. *Twomey*, 404 US 477; *US* v. *Ash* 413US 300 (1973).
21. *Supra* note 1 at 17.
22. *Id*. at 23.
23. AIR 1950 SC 27.
24. *Id*. at 265-6.

it provided that the cook of Bishop of Rochester boiled in oil or if it allowed the execution of death sentence by firing squad, guillotine, electric chair or boiling in oil. According to him, curbing of the freedom of wrongdoer ensures the liberty of numerous persons. During the pre-*Maneka* period, the judicial strengthening of security of society is found in *Jagmohan Singh* v. *State of U.P.*[25] where the court while upholding the constitutionality of capital punishment highlighted the deterrent effect of punishment and symbolized it as a token of emphatic disapproval of society.

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.[26] The significance of crime control model was highlighted by Sarkaria J in *Bachan Singh* v. *State of Punjab.*[27] His following observation deserves to be quoted:[28]

> Many judges — especially in Britain and the United States, where rising crime rates are the source of much public concern – have expressed grave doubts about the wisdom of the view that reform ought to take priority in dealing with the offenders.

During the post-*Maneka* period, the due process gained ascendancy. Bhagwati CJI in an article observed that[29] "by and large the summit court in our country has through progressive and humanistic interpretation enlarged the rights of the suspect accused.''

However, there are cases where the benefits of liberal judicial interpretation have been denied to the accused.[30] In the area of punishment the Supreme Court has made a clear shift from due process model or justice model to crime control model. While refusing death penalty in *Mahesh* v. *State of M.P*[31] the court stated that to give lesser punishment for an accused is to render the justicing system of the country suspect. The common man will lose faith in courts. In such cases, he understands and appreciates the language of deterrence more than the reformative jargons. The Supreme Court has expressed its

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25. AIR 1973 SC 947.

26. *Maneka Gandhi* v. *Union of India*, (1978) 1 SCC 248. See M.P. Jain, I *Constitutional Law of India* 1279-1309, 1323-1328, (Vth edn., 2003) ; see also M.P. Singh (Rev.), *V.N. Shukla's Constitution of India* 164-181(10th edn.).

27. (1980) 2 SCC 684: AIR1980 SC898.

28. (1980) 2 SCC 684 at 718.

29. P.N. Bhagwati, "Human Rights in the Criminal Justice System" 27 *JILI* 1(1985).

30. *Malak Singh* v. *State of Punjab*, AIR 1987 SC 760; *State of Maharashtra* v. *Champa Lal*, AIR1981 SC 1675.

31. AIR 1987 SC 1346.

concern in *Sevika Perumal* v. *State of T.N.*[32] that undue sympathy for accused for imposing inadequate sentence would cause more harm to justice system and undermine public confidence. It is the duty of the court to award proper sentence having regard to the nature of offence and the manner in which it was executed or committed. Similarly, in *Dhananjoy Chatterjee* v. *State of W.B.*[33] the court asserted that shockingly large numbers of criminals go unpunished which weakens the credibility of justice system.

In a number of cases[34], the court has emphasized that punishment must fit the crime and it is the duty of the court to impose proper sentence, having regard to the degree of criminality and desirability of imposing such punishment. In *State of M.P.* v *Munna Choudhary*,[35] it was asserted that imposition of sentence without considering its effect on the social order in many cases may not be lost sight of. Balsubramanyam J observed:[36]

> It is true that reformation as a theory of punishment is in fashion but under the guise of applying such theory, the courts cannot forget their duty to society and to the victim…The legislative wisdom reflected by the statute has to be respected by the court and departure therefrom made only for compelling and convincing reasons.

The dilemma appears well reflected in the following observation of Arijit Pasayat J made in *State of M.P.* v. *Babbu Barkare:*[37]

> After giving due consideration to the facts and circumstances of each case, for deciding just and appropriate sentence to be awarded for an offence, the aggravating and mitigating factors and circumstance in which a crime has been committed are to be delicately balanced on the basis of really relevant circumstances in a manner by the court. Such act of balancing is indeed a difficult task.

Concluding observations

Administration of criminal justice is not an easy task as it involves the appreciation of various complex issues. Balancing of interests of

32. AIR 1991 SC 1463.

33. (1994) 2 SCC 220.

34. Protection of society and deterring the criminals is avowed object of law, *Jashubha Bharat Singh* v. *State of Gujarat*, (1949) 4 SCC 353 ; It is the duty of the court to impose proper punishment**,** *Erabhadrappa* v. *State of Karnataka*, (1983) 2
SCC 330.

35. (2005) 2 SCC 710.

36. *Id* at 718.

state, criminal and victim is indeed a difficult task and it has been duly acknowledged by the apex court of the country. The task of weighing different interests has oscillated between due process model and crime control model.

Criminal law explosion of 1960 in the US brought about the over-dominance of due process model over crime control model but was a temporary phase and the Supreme Court made retreat from due process model by tilting the scale in favour of crime control model. In the US possible connection is found to exist between liberal criminal holdings and increasing crime rate. Hence crime control model has been advocated as many cases have been decided emphasizing law and order theme. White J and Berger CJ have been leading advocates of the change.

In India earlier there was adherence to crime control model because the post Independence developments did not allow the dominance of liberal approaches. However, post-*Maneka* period saw clear departure from crime control model as the Indian Supreme Court has handed down many liberal criminal holdings in criminal area. Clearly, prior to 1977, there was dominance of crime control model but after 1977, due process model was preferred over crime control model. However, of late, the cases show a shift from due process model or justice model to crime control model. The finding is well supported by following observation[38]:

> Be that as it may, generally speaking the Supreme Court did a lot of soul-searching in the matter of its approach towards punishment. It may be correct to say that it has moved towards crime control model of criminal justice rather than justice model of criminal justice administration. The courts often quoted concern for societal security makes it to abandon the much benign rehabilitation and to embrace retribution as aim of punishment.

Thus, the courts should impose appropriate punishment keeping in view all interests pertaining to criminal justice administration, *i.e.*, interest of the accused, interest of the victim and interest of the society.

*S.N. Sharma**

38. K. N. Chandrasekharan Pillai & Jyoti Dogra Sood, "Supreme Court : In Retrospect and Prospect" 48 *JILI* 19 (2006).

* B.Sc., LL.M., Ph.D. (B.H.U). Reader, Dept. of Laws, H.P. University, Shimla.