6. CONCLUSION AND SUGGESTIONS

6.1 INTRODUCTION

This research is an attempt to focus on the reasons why torture and ill-treatment continues problem in India. Despite several positive initiatives in recent years, torture and ill-treatment continues to be endemic throughout India\(^\text{207}\) and continues to deny human dignity to thousands of individuals.

While constitutional and legal provisions do, as the Government of India regularly argues at international forum, provide an elaborate framework of safeguards for detainees against torture, non-implementation of these safeguards and their absence in special legislation; ensure that torture continues despite these safeguards.

Those arrested in areas of armed conflict are particularly vulnerable to torture, often leading to death in custody or extra judicial execution since they are not offered some of the same basic legal protections as individuals in other areas.

6.2 Failure of Anti-terrorism Laws to Tackle with the Terrorism

The anti terrorism legislations failed to gave punishment to terrorist. In many times the anti terrorism laws not gave punishment due to some problem. In case of Afzal Guru, an accused in assaulted in attack on Indian parliament and

\(^{207}\) The NHRC disclosed in August 2000 that between 1999 and 2000 there were 1,143 deaths in custody reported to them (these include deaths in judicial as well as police custody). Figures for the number of complaints of torture reported to them were not disclosed (in fact NHRC does not log cases of torture as a separate category of complaints).
gave death sentence by the supreme court but the punishment not given due to excuse application is pending before the president.

This thing shows loopholes of Indian system so liberal before those criminal who attack the Temple of democracy in India. Similar, in case of Ajmal Kasab, one of the terrorist who attack the Mumbai on 26/11 and killed the hundreds person.

This is true that the misused of TADA and POTA in vary widely. But there is need have anti terrorism legislation in India. The usual arguments that are trotted out against an anti-terrorism law are that the law is misused, that acts of terrorism could not be prevented even when we had such a law, and that the existing laws are adequate to deal with terror.

All these are specious. If a law is misused, the answer lies in punishing those who abuse its provisions and not dismantling the law itself. The Arms Act, the Narcotics Act and a host of other laws are also misused. Shall we, then, repeal all these and let the criminals have a field day? Besides, counter-terrorism involves a comprehensive package; law is only one of its components.

Those arguing that the existing laws are adequate are either deluding themselves or saying so for extraneous reasons. In the wake of 9/11, the US enacted the PATRIOT Act, which gave sweeping powers to the domestic law enforcement and the intelligence agencies.

It modified the procedures that protected the confidentiality of private communications, reinforced the curbs on money laundering, prevented alien terrorists from entering the US and enhanced the penalties for acts of terrorism. The UK passed an Anti-Terrorism Crime and Security Act, 2001, which gave additional powers to the police and reinforced the security of airports and laboratories. It even allowed the internment of foreign nationals suspected of involvement in terrorist activities.
After reading the whole view, various suspicion and voices have been raised by people NGO's under the pretext of constitution, constitutional provisions, and equality before law and civil rights. All these organisations must keep in mind that provisions are there in the constitution where reasonable restrictions can be enforced even upon the liberty of people and there is need to stringent law to tackle the terrorism.

We also need to bear in mind that much as terrorist keep pace with emerging technology- the current phenomena being termed as fourth generation warfare and certainly India also need to fine tune and adopt their anti terror legislation to fought to the changing time.

The mandate is particularly relevant in India on one hand it states identified as an emerging economic growth which is harassing it resource to take it appointed place in the hierarchy of nation at the other hand its dramatic progress in this direction is sought to be stymied by the enemies by carrying out repeated terror attacks right across the country.

Even as proactive executive means of copying with terror (intelligence, organisational, technical and human capital related) fall into place, we need not just law that tackle to terrorism but more important what new generation of people who must be educated an what it means to fight terror in a democratic set up. In the view of the misuse of power, we can make develop a system to stop it misuse.

6.3 Repeal of Draconian Laws

In 2004, India took a significant step forward for human rights by repealing the Prevention of Terrorism Act of 2002, which had established a permissive set of legal rules to prosecute acts of terrorism largely outside the ordinary rules of the regular criminal justice system. While POTA itself was enacted in the aftermath of the major terrorist attacks of 2001 in both the United States and India, the statute
built upon a long tradition of antiterrorism and other security laws in India dating since well before independence.

While India has faced serious threats from terrorism and other forms of politicized violence for decades, these special antiterrorism laws have not proven particularly effective in combating terrorism. Terrorism has persisted as a problem notwithstanding these laws, under which few of the individuals charged have been convicted.

Moreover, like antiterrorism laws in other countries, including the United States, aspects of India’s antiterrorism laws have raised significant human right concerns. Some of those concerns have remained even in the aftermath of POTA’s repeal, since the Indian government has preserved many of the law’s provisions in other statutes. Other, similar laws also remain in place at both the central and state levels, such as the Unlawful Activities (Prevention) Act.

Attentiveness to these human rights concerns is not simply a moral and legal imperative, but also a crucial strategic imperative. As the Supreme Court of India has recognized, “terrorism often thrives where human rights are violated,” and the lack hope for justice provides breeding grounds for terrorism.”

Since terrorists often deliberately seek “to provoke an over-reaction” and thereby drive a wedge between government and its citizens- or between ethnic, racial, or religious communities – adhering to human rights obligations when combating terrorism helps to ensure that advocates of violence do not win sympathy from the ranks of those harmed and alienated by the state.

This study comprehensively examines India’s recent antiterrorism and other security laws, situating those laws in historical and institutional context in order to (1) analyse the human rights concerns that arise from these laws and (2) understand the ways in which British colonial-era patterns and practices have evolved and been maintained after independence. POTA and other Indian
antiterrorism laws have raised a host of human rights issues, some of which are similar to those raised by antiterrorism laws in other countries, including the United States. Such concerns include:

- Overly broad and ambiguous definitions of terrorism that fail to satisfy the principle of legality;
- Prevention procedures which infringe upon due process, personal liberty, and limits on the length of pretrial detention;
- Special courts and procedural rules that infringe upon judicial independence and the right to a fair trial;
- Provisions that require courts to draw adverse inferences against the accused in a manner that infringes upon the presumption of innocence;
- Lack of sufficient oversight of police and prosecutorial decision-making to prevent arbitrary, discriminatory, and disuniform application; and
- Broad immunities from prosecution for government officials which fail to ensure the right to effective remedies.

Enforcement has varied widely from state to state, facilitating arbitrary and selective enforcement on the basis of religion, caste, and tribal status; violations of protected speech and associational activities; prosecution of ordinary crimes as terrorism-related offences; and severe police misconduct and abuse, including torture, in most states, prolonged detention without charge or trial appears to have been the norm, rather than the limited exception.

As a result, to a considerable degree India’s antiterrorism laws have functioned more as preventive detention laws than as intended to obtain convictions for criminal violations- but without heeding even the limited protections required for preventive detentions laws under the Indian Constitution, much less more exacting standards of international law. At times, human rights defenders who have
challenged these violations or defend individuals accused under the antiterrorism laws have faced retaliatory threats and intimidation.

Continuing a pattern established by the British, India’s antiterrorism and other security laws have periodically been enacted, repealed, and reenacted in the years since independence. To some extent, this cycle derives from underlying weaknesses in India’s ordinary criminal justice institutions.

Even when they create distinct mechanisms and procedural rules, India’s antiterrorism laws rely upon the same institutions – police, prosecution, judiciary – used in fighting any serious crimes, and to the extent these institutions fail to protect human right when enforcing ordinary criminal laws, they are no more likely to do so in the high pressure context of fighting terrorism.

At the same time, the impulse to enact special laws stems from the real and perceived problems concerning the effectiveness of the regular criminal justice system itself, which create intense pressures to take particular offences outside of that system.

To break this cycle and fully address the human rights issues arising from India’s special antiterrorism laws, it is therefore necessary to improve and reform the police and criminal justice system more generally, both to protect human rights more adequately and to alleviate the pressures to enact special antiterrorism and security laws in the first place.

Terrorism, which itself represents an attack on human rights that governments have an obligation to combat, is a complicated, serious, and difficult problem to address. When responding to terrorism, however, democratic governments must fully protects human rights to advance both the rule of law and long-term security itself, since violations of human rights often plan the seeds for future acts of terrorist violence.
Unfortunately, in much of the former British empire, including India, postcolonial governments have all too often instead maintained and built upon the more authoritarian aspects of the colonial legacy in their emergency, antiterrorism, and other security laws.

Especially in recent years, the U.N. Security Council has to some extent facilitated this disregard for human rights by failing to require states to take their international human rights obligations seriously when implementing their antiterrorism obligations under Resolution 1373.

6.4 SUGGESTIONS

Human rights violation can be stopped by application of old Indian heritage of composite culture, culture for co-operation, co-existence, love, affection, peace and tranquility in the society. In this reference, it is germane to refer here the human rights education of our sages and religious teachers, they said peace, tolerance and co-operation is the best system for running the society in the smooth way.

The Great Ashoka adopted this humane education for maintaining good governance in old India. King Ashoka adopted patron of Buddhism. Buddhism is the way of co-operation, peace, and tolerance in society. Buddha’s education shows great tolerance by requiring honor to be shown to all belief. In this context, human rights education is based on social contract theory, ground of this theory is in the foundation of social contract, which shows equal status and capacity of human race in the modern civilized society.

In recent years, however, India has taken several positive steps, repealing POTA and seeking to transform the police and criminal justice institutions that inherited from the British. Independent India’s constitutional tradition is a proud
one, and in combating a threat a terrorism that is among the most serious in the world, a durable, enduring, and ever-improving commitment by India to protecting fundamental rights can serve as an important international example. In the light of above considerations I will suggest the following suggestions.

6.4.1 Condemn Terrorism

Terrorism can be condemned by creating awareness in the general public. Terrorism can be also be condemned by inculcating social and moral values in primary studies to higher studies. India has a great heritage of social, moral and ethical values, these values can be inculcating in the students from primary level, so that they will not involve in the anti-social behaviour.

6.4.2 Childhood care shall be taken

Today’s world is world of technology; these technological developments have a great impact on the children’s mind. They try to imitate the anti-social behaviour. It is the need of time that our young generation shall not involve in the terrorist activities or Naxalite activities. To achieve this, it is the duty of the parents, teachers and institutions to take efforts. And we can also try to bring the Naxalite in the social flow by giving them opportunity of reformation.

6.4.3 The Law shall be Stringent

There has been consistent calls for more laws to combat the terrorism, even though there is already a plethora of laws in India including the general and traditional law Indian Penal Code, The Unlawful Activities Prevention Act, 1967; The Criminal Law (Amendment) Act; The National Securities Act, 1980; State enacted laws, like The Maharashtra Control of Organized Crime Act, 1999 etc. The only need is to implement these provisions effectively, humanly and scientifically to condemn the terrorism.
6.4.4 The Implementation Mechanism shall be strengthened Instead of Normal Police Agency

Normal police is overburdened with the maintenance of law and order, security to the political leaders and investigation of the general crimes. The implementation mechanism needs to be strengthened to curb the terrorism. Normal Police Agency is not sufficient to tackle with the terrorism.

Special Forces shall be established to prevent the terrorist activities, special Agency shall be set-up to investigate in to the matters of terrorism and special courts shall be established for the speedy trial and speedy disposal of the cases on terrorism. We need to improve our Implementation Mechanism on the ground of the Mechanism like United Kingdom and United States. They successfully prevent the terrorist activities in their states.

6.4.5 The Judiciary shall be Stringent

To curb the menace of terrorism the role of judiciary is very significant. Judiciary in various landmark judgments laid down certain important principles to tackle with the terrorism. It is the need of the time, that judiciary shall take the stringent view on matters of terrorism, considering the human rights of citizens. Judiciary shall strictly interpret the provisions of anti-terrorism laws, so that the terrorist shall not get any opportunity of release.

6.4.6 Strong Legislative Policy and Effective Implementation

India witnessed number of legislations on terrorism since independence, but the terrorist activities are increased day by day. To deal with the terrorism, we need strong legislative policy. It is not sufficient to enact the stringent laws but the effective implementations of those laws are very much necessary.

Due to the lack of effective implementation we witnessed number of anti-terrorism laws viz., The Terrorist and Disruptive Activities (Prevention) Act,
1985, The Prevention of Terrorism Act, 2002, etc. There can be no doubt that, if a clear anti-terrorism strategy involving the police, the executive and the judiciary could be formulated and executed on a national scale, the successes would definitely achieved.

6.4.7 Separate Procedure for Terrorism in Substantive Law is necessary

Under The Indian Penal Code, 1860 Chapter V deals with Criminal Conspiracy, Chapter VI deals with offences against state. Offences enumerated in these chapters also concern with the terrorist activities, for example, offence of Sedition under section 124-A. To punish the offenders the procedure is laid down in The Code of Criminal Procedure, 1973, here the problem arises that the offender who involved in the terrorist activities tried as per the general procedure and sometimes they get the benefit of the lacunas in the charge sheet by the investigation team. Considering the seriousness of the offence of terrorism there shall be the separate procedure to the offenders who involve in the terrorist activities. That procedure must be expeditious, so that they shall punish to avoid the further acts.

6.4.8 Special Force

Special shall be established to treat the terrorist; generally they are subject to the regular forces like Central Bureau of Investigation, Anti-Terrorist Squad, or other similar agencies. But to treat the terrorist special force shall be established and these Special Forces are independent from other forces.

There is an urgent need to create a well thought out or standard operating procedure in case of a terrorist incident. Once an incident is declared as a 'terrorist incident' by the designated authority (could be the police commissioner in case of a city) then all resources civil, military or private must come under the pre-designated commander. All agencies must be obliged to obey his orders. It is the
lack of unified command and pooling of resources on 26/11 that resulted in the terrorists holding out for over 72 hours.

**6.4.9 Need of Police Reforms**

The 1902-03 Indian Police Commission found that “the police force throughout the Country is in a most unsatisfactory condition, that abuses are common everywhere, that this involves a great injury to the people and discredit to the Government and that radical reforms are urgently necessary”.

We need to improve the conditions of Indian Police so that, they efficiently do their duties. Now a day’s Police force is overburdened, as per the recent survey there is 1 police for 750 peoples. New recruitments are to be conducted and Police Force is separated from the investigation of the terrorist person. As suggested above there shall be a separate force to conduct the investigation as well as trial of the terrorist.

**6.4.10 Provide Adequate Safeguards for Detainees**

Safeguards for detainees on arrest which have been set out by the Supreme Court, particularly in *D.K. Basu vs. State of West Bengal* should be incorporated in relevant statutory law and all police manuals as a matter of urgency.

Measures should be put in place to monitor their implementation and statistics published periodically. In areas of armed conflict where powers of arrest are provided to paramilitary and armed forces as well as police, information about arrests should be kept in a central register which is publicly available.
6.4.11 Strengthen and Support the National Human Rights Commission and Other Statutory Bodies

The Central and State governments should demonstrate respect for the role of the National Human Rights Commission and State Human Rights Commissions (hereinafter referred as NHRC and SHRC’s).

There should be immediate official condemnation of statements made by government and police officials who attack the work of the NHRC and SHRC’s and undermine their work. The NHRC and SHRC’s should given power to investigate allegations of human rights violations by members of armed and paramilitary forces, and also given power to visit custodial institutions without having to previously notify state officials.

6.4.12 Establishment of Mohalla Committees

All cities must establish a network of Mohalla committees and housing societies to monitor all suspicious movement in their own locality. Each city must have a dedicated police officer to man this 24x7.

This measure will enhance both intelligence gathering as well as alert police to movement of terrorists. Police can circulate photographs and information of the fugitive suspects to these committees. In short a city wide concept of 'neighbourhood watch' needs to be implemented immediately. This will cost next to nothing.

6.4.13 To Cut off the support

In all terrorist incidents the police are more concerned with the Big Fish. This is a mistake. It is necessary to come down hard on the foot soldiers or persons who provide support like transport or lodging to the terrorists. These individuals must be punished quickly and made to pay a price. The idea behind this logic is to cut off the terrorists from their supporters due to fear of retribution by the state.
Like guerrillas without help similarly terrorists without local help would be like fish out of water. Infringement of laws to support acts of terror either for money or due to ideology needs to be viewed seriously by both the police (and especially) by the judiciary.

6.4.14 Responsible Media and Role of NGO’s

In this effort by the State, the intelligentsia, media – especially the electronic media – and non-government organisations can play a significant and useful role. They could not only infuse confidence among the people against terrorism but also act as a bridge between the community and the State in effectively terrorism. In this modern era electronic media could be very effective; it can create impact on the mind of the people. We also witnessed the impact of media in elections, surveys and many more aspects of life.

At the time of the attack of 26/11 media was more enthusiastic and due to this enthusiasm, the master mind of the attack who sit cross border was controlling the activities of the terrorists in Mumbai. Non Governmental Organisations can also played very important role by creating awareness against the terrorist activities among the people, by organising lectures, street-plays, dramas, and by many more ways.

6.4.15 Provide Human Rights Training and Education to Security Forces

It is extremely important to train and educate the security forces – police, Para-military and the army – about the silence, non-violability and importance of observing the human rights of people.

The training and education should focus especially on the lower rung of the security forces, which, in large numbers, comes into contact with the community. These trainings will help the security forces to inculcate the human rights values in
them. In this effort State as well as the NGO’s can play a better role to train the security forces.

Training programs for law enforcement officials and other should include practical methods to prevent torture and not just theoretical teaching of legal provisions and human rights standards. Human rights education or ethics training should be integrated into training focused upon increasing the professionalism of the police.

6.4.16 Strengthen the Security in the Educational Institutions.

Recently talibanis in Pakistan killed more than 140 school children in one of the Army Public School in Peshawar. They deliberately target the army school where the children are of army officers who participated in the mission against the terrorists activities. It is a wakeup call for the entire universe that, terrorist’s organisations can target any one to fulfill their demands. Therefore, it is very much essential that protection shall be necessary in the school level. It is the duty of the state as well as all the educational institutions to provide the protection to their pupils in the institution.