CONCLUSION

The present doctoral thesis titled, "The International Legal Regime to prevent and contain International Terrorism" is an important topic and have contemporary significance of the present time. We are passing through a difficult time of transformation in this open access society where violence is spreading fast at the cost of traditional social values and the growing consciousness for protection of human rights. The act of terrorism which is a heinous form of violence based upon the idea of practice of terror and believing on the efficacy of force for social and political needs. When the basic legitimate expectations of the people is not fullfilled by the state, the social problems in the form of civil unrest rose to National and international level. Laws are enacted by the state to curb and contain this evil menace. The number of enacted laws maybe sufficient but by and large ineffective because of the fact that the state comes under the pressure due to the development of human right jurisprudence and subsequent limitations of the law enforcement agencies. The state find itself in a difficult position to meet the national and international norms perspective to a mutual accomodative end. It is therefore a difficult cumbersome task for the research scholar to draw balance between International legal regime with the national security legislations satisfying the human right norms. Pious attempt has been made in the aforesaid area in the present work.

Findings of the research topic are as below

The present thesis work has been divided into eight chapters including conclusion for a systematic analysis and to highlights the issues involved in respect of the areas of research. Chapter one introduces the subject to bringout the conceptual frame work on International terrorism. After going through a hundreds of definitions not a single definition found to be universally agreed. Due to this problem in definition the areas of right to self determination, liberation wars, militancy, and different international principles like the sovereignal inviolability has been put in a critical Juncture. Historical perspectives also discussed.
Typology of terrorism again an overlapping area and no water tight separate kinds of terrorism very much convincing. The existing national and International laws providing comprehensive and composite definitions to distinguish the different kinds of terrorism. Yet a definition is to be picked up for its applicability in international plane.

Terrorism is a complex worldwide phenomenon. To know it and to fight it and to control it requires to be dealt with the root causes. Causes of terrorism may be many. Terrorism is a complex psychiatric disposition of a human being or a group of human being influenced with multiple social factors. This has been discussed in the third chapter. The problem lies with unpredictability of the act and causes.

The most significant issue relating to terrorism in respect of, whether the international terrorism can be prevented in its shape and form altogether through international norms and instruments have been discussed in chapter four. One can find the detail deliberations on the International legal regime of terrorism with the steady evolution of international Criminal Jurisdiction and the efforts to apply it universally to prevent and contain it. The problem lies with the acceptance and non-acceptance of this intended universal criminal Jurisdiction. One hundred twenty two countries have ratified Rome's Treaty till 1st September 2014.

The investigator has dealt with the different International conventions convened by the UN and other International organisations to set standard norms in pursuant to combat international terrorism in the fifth chapter.

The chapter six is confined to the most critical area of application of anti-terror laws and protection of human right. The security personnel has to discharge most vital responsibility of maintaining law and order & security of the nation state in one hand and protection of the human rights of the individuals or the groups of people on the other hand.

While performing these equally important duties the police or the security personnel has to follow the international norms signed and ratified by the Government of India as well as the domestic legislations laid down by the state along with the direction issued by the apex court in respect of life and liberty,
prohibition of torture or cruelty and other allied human right issues.

Not only the security personnels, the state law enforcement officials also fall under responsibility of protecting the norms of human right even if a single dreaded terrorist is killed in anti-terrorism activity. At the same time very often the human rights issues are not attracted when hundreds of people are killed by a terrorist, who subsequently shot dead by the state forces. The state, now, comes under a difficult task of providing security to the innocent citizens and protecting their human rights including the perpetrator of terrorism. Attempts has been made to understand this delicate issues.

The followings are the observations made by the research scholar on his research work.

Society is ever progressive and changes so do with its values. Crimeless society is a myth. Human beings always pursue to reduce it towards zero criminality. Social unequality and social injustice the realities among the human beings which are contributing factors for violence. Terrorism is a peculiar kind of violence influenced with multiple causes. The present day terrorism is wide spread and mostly international. The foundation of freedom, justice and peace are based on the inherent dignity equality and inalienable rights of citizens of the world.

The evolution of the act of terrorism even though take its origin from the 1st century but in its modern form since inception of international law in eighteenth Century. During the colonial era the frequent violence took place around the world for the preservation of indigenous people’s right over their territory and political independence in the form of right to self determination. Terrorism in the ultimate analysis bears upon a complex of psychic dispositions of the diverse participants in the social process like the intentions the motives of the perpetrator, the effect it produces upon the victim and impacts on the general community. Each pattern of this Psychic dispositions may vary as between individuals, group of individuals or other non-state entities. The contemporary debates on international terrorism betray a good deal of irony and hypocracy at different levels. The states keen on evolving a legal regulation of international terrorism here and now professedly
The frequent and meticulous attempts by the international community in past one century for an all-embracing definition could not be materialised as on today, except the UN security council's resolution 1373 of 2001 which is binding for all member states.

Further any anti-terrorist mechanism to be valid and operational on the international plane, needs to be founded on an adequate perception of essential characteristics of the international legal process. The international plane correspond to a society of sovereign states. It is less formal Legal process compared to the characteristic formalism of the domestic legal process.

The trend in international decision making in the realm of international crimes mainly to protect innocent human beings. Examples includes war Crimes, genocide, hijacking and other offences against international civil transport & navigations and communication systems and also against diplomatic persons. Each of these categories of crimes is made subject to a different set of Legal norms. Yet the states are not willing to accept a regime of obligation beyond general obligation to extradite or submit alleged offenders to competent national authorities for the purpose of prosecution. Similarly in domestic domain there are some areas where introspection of the activities by the Armed forces and paramilitary forces with respect to their way of functioning is quite essential. The excess power given under some sections of The Armed Forces Special Power Act, 1958 has now become way of life, for the vested interest in hyping up the threat of terrorism so as to result in their continuation in position of power. This Act which empowered Army and para military forces who are deployed with a clear object to defend the nation against external aggression. with a power of extrajudicial killings unequely in suspicion.

The concept of curbing terrorism by force effectively is partially valid. The poor working class, slum dwellers, dalits have strong resent against the strong-arm tactics of the state. Good will discussion, understanding welfare approach, benevolence are equally effective against militancy and terrorism to neutralise it.
The greatest challenge on international anti-terrorism regime is the growing tendency on the part of big powers to resort to unilateral punitive action under the garb of counter-terrorism response, throwing to the wind norms of decency and proportionality, principles of humanitarian law. Above all the Principle of legitimacy in terms of rights and wishes of the people of the target state. The UN charter have only two exceptions to the general prohibition of the use of force the right to self-defense contained in Article 51 on one hand and collective action initiated by the Security Council within the framework of Chapter VII on the other. The chapter provides for action with respect to threats to the peace, breaches of the peace and acts of aggression. The basis for military sanctions is outlined in Article 42, which authorizes the Security Council to use air, sea or land forces to maintain or restore international peace and security once it has established a threat to or breach of peace pursuant to Article 39. Under United Nations practice the Security Council may delegate the implementation of such measures to member states. Simply to understand if the member states to apply force derived from the right to self-defense must authorized by the Security Council.

After a detailed study the research scholar made the following suggestions to combat international terrorism.

a) By virtue of Rome's treaty International Criminal Court has been established in July 2002 is a positive step ahead in legal plan to curb global terrorism. Unconditional acceptance of Universal Jurisdiction of International Criminal Court by all member states of UN is the need of the hours. Because, the jurisdiction of ICC is primarily complementary in nature.

All this does not mean that the incidence of international terrorism should not be tackled in tandem with other planes. It is necessary to deal with it to evolve some mechanism. Those are

b) to ensure the protection of innocent human beings by co-ordinated efforts of the states in bringing the culprits to book.

c) Attempt to manipulate the United Nations either as a push button enforcement body or belittling its role as a helpless or hapless bystander (action against Taliban and Al-Qaeda) is no way helpful.
d) The only way to enhance the effectiveness of UN as a Central international mechanism to combat terrorism is to enable it to function on the basis of consensus, uniform application of norms and standards, transparency, impartiality and fair play of actions.

e) Above all a state must comply in good faith with all the international obligations it has freely undertaken.

f) A United Nations patronised multilateral treaty convention on against international terrorism is of vital importance to be signed and ratified by all member states.

g) The Principle of aut dedere aut judicare should have an universal application to punish the perpetrator of international terrorism.

h) All member states of UN must add constitutional mandate provision for the protection of the lives of their citizen from the menace of terrorism. In this context India should add one more subclause by insertion to article 21 as 21 (B) for the protection of innocent people by recognizing their right to life, and right to live peacefully free from violence of terror.

i) The number of antiterrorism laws in India and internationally convened conventions are not insufficient. But the real trouble lies with the implementation part. Nation states must with their utmost sincerity and care follow the provisions of the international treaty obligations by giving fresh force into the system and mechanism that has already taken concrete foundation.

j) Dealing with the threat of terrorism in the Kartar Singh's Case the learned court of the country warned, "Killing of democracy by gun and bomb should not be permitted. But in doing so the state has to be vigilant not to use methods which may be counter productive. Care must be taken to distinguish between terrorists and the innocent."

To the cases of the threat of terrorism the supreme Court on various decisions refusing to punish policemen and instead ordering payment of compensation in cases of torture, execution, disappearances and in the similar cases made the police believe that they can get away with the payment of money.
k) The police have the evil practice of employing surrendered terrorist or militants and giving them guns & money and allow them to act & operate on behalf of the police as vigilant create serious law and order problems in many states. The person who abduct gun should not be allowed to pick up gun again, not even with the permission of police. These people may eliminate a few people whom the police may consider undesirable, virtually they legitimize extra judicial killings and undermine the rule of law. Surrended terrorists has been utilized and operated by police to perpetuate violence which is not brought to the knowledge of judiciary or state. State has to take utmost care to prevent it.

l) Almost all terrorist organisations are rely on foreign funding to operate in any country. The organisations or states who fund the terrorist organisations must refrain from the act and every state should be vigilant on this aspect through their revenue intelligence organisations and other enforcement authorities.

m) The state and society must change their attitude towards victims of crime. Many countries including India more emphasis is given on punishing the criminals and less importance on paying compensation to victims of terror attacks. UN should consider to take positive step under the counter terrorism committee to form "Terrorism victim compensation Cell" to look after the interest and need of the terror victims and also to pursue all the states to Legislate comprehensive scheme of compensation on their respective domestic domain. The rule of law and international legal order should be allowed to prevail. Human rights should be available for all including the security personnel and the last but not least for perpetrator also.

n) Confidence Building Measures (CBMs) for return of people from a boarder state to his own state resulted due to migration because of fear of terror attacks must be initiated. The UN should prepare a special team for CBM among the developing countries and developed countries by creatting jobs, infrastructure and other economic development programmes to enhance the mutual trust among member countries. In the diplomatic spheres the representatives of the states should refrain from involving different clandestine activities in the country of their
missions, by avoiding coercive means of diplomacy in their foreign policy.

  o) UN as well as the regional organisations should formulate some mechanism for surrender and rehabilitation of terrorists of the regions clinically or by case wise observing their needs and other compulsions. Monitoring mechanism under Counter Terrorism Committee of UN should be developed to its optimum efficacy.

  p) It is high time for the world leaders or the heads of the states to realise that terrorism being sociopolitical issues to be resolved politically instead of showing military mighty on other states. The countries which suffers terrorism or militancy problems the respective government should initiate a peace process with all the militant groups instead of granting excessive power, unaccountable immunity to the Army or paramilitary forces or any other regional task forces like NATO etc.

  q) More emphasis should be given on UN peace keeping forces.

  Terrorism is a brutal curse, terrorists choose their game, time and target and kill, mutilate, debilitate and vanish. Those who take note of the circumstances after such incidents are expected to act in response with extreme care and restrain. The system should be prepared and allowed to absorb the shocks.

  r) International terrorism is more or less connected with international politics and international law. The relationship between wishful thinking and the reality on the ground, between words and actions, as well as between conventions and deals is often blurred. Yet patience is required every now and then. That does not mean that the politicians or legal experts should relax on this extremely relevant and important issue of terrorism. The Security Council of UN has intensively involved in this issue. The 2001 resolution in this regard leave no room for any misunderstanding. The resolutions of security council is binding and the status of the Security Council, the General Assembly and subcommission on Human rights should be emphasized again and again. This concerns the acceptance of a 'Chain of command" with security council and its counter terrorism committee in charge of policy making and codification. It is also important that the mandate
of the special Rapporteur may have to be fully coincide with the security council line of thinking not limiting to the human rights issue alone.

s) Based on the Security Council resolutions, the Principle of aut dedere aut judicare deserves to be reinforced including the acceptance of universal jurisdiction in appropriate cases. Of course state should be able to first rely on fully exploiting their domestic jurisdiction and secondary on the expanded extradition instruments. Universal Jurisdiction should be used as the last resort.

t) Special attention and care should be paid to the position of the accomplice. Because the Security Council resolution 1373 of 2001 has extended the target group to include all those possibly support terrorist acts. Yet it is this “Support- element” exactly to be interpreted by group of international law experts nominated by the secretary general of United Nations.

u) International terrorism is a part of International law is about cross-border activities, cross border impacts which relate to public international law, International criminal law, human right laws and beyond. The maintenance of International law is reflected like a term ‘Chain of command’. The article 24 of UN charter has entitled the security council to act as a legislative body to encompass the chain of command to combat international terrorism for the greater preservation of freedom and security which is its prime responsibility. In the opinion of the investigator this might indeed amount to re-interpretation of existing laws, not as a defacto law making body.

v) The direct impact of terrorism on the individuals the victims the offenders and all others feel that they have to surrender part of their freedom in exchange of increased risk of security. It has been submitted that the security council dictates international laws and thus human rights law. The statement indicating that the Security Council Resolution 1373 is in accordance with human rights law are of no relevance. If needed human rights law will be amended by the Security Council. This is of some importance as it has been observed that the human rights lobby appears to focus on the negative side effects of the counter terrorism measures very often. One should get the priorities straight and agree
that re-balancing the security freedoms equation should not focus on freedom alone. The fragile balance between freedom, security, and justice describes to be revisited.

w) Within the realm the effects of counter terrorism measures can be best felt and the language of 1373 resolution of Security Council on 28th September 2001 should not be denied particularly where it concerns safe heaven and refugee status of an individual perpetrator. (Article 1(F) of 1951 Refugee convention).

x) Careful attention had been paid to armaments and related worldwide smuggling efforts where as issues like trafficking has been neglected and that area is to be further scrutinised for more checkmate.

y) Mr. Lahiri, India’s representative to UN has expressed his view that India do not have any reservation to accept international criminal Jurisdiction if the definition of terrorism is defined more specifically.

z) As extradition is purely subjective matter it do not compel states to extradite criminals to the state where wanted. Nothing also denies to extradite without a treaty. To whip terrorism India’s Ex. PM I.K. Gujral called upon the United Nations General Assembly to draft an “International Extradition law.”

Some recommendations are made as follows

1) India should ratify the Rome’s Treaty as soon as possible to accept the Universal Criminal Jurisdiction of International Criminal Court.

2) India’s draft definition to terrorism and international terrorism under comprehensive Draft provisions should be accepted by the United Nations without any further delay.

3) People’s mandate in the form of civilian control over police or paramilitary of Armed forces must be reestablished. In the words of K.C. Pant the Ex. Home Minister that there is no justified reason either for any other enactment or continuation of the Security legislation like AFSPA (Armed Force Special Power Acts), which must be repealed immediately.

4) Justice Verma committee’s report on criminal law amendment must readily incorporated to the penal statutes which will definitely help to punish the
5) In order to add more dignity to individual’s right to live peacefully India should insert another subclause to Article 21 of the constitution as 21 (B) to protect the innocent free from menace of terrorism.

In Naga people’s Movements Human Rights V. Union of India, AIR 1998 Sc 431, during the course of arguments, the Attorney General has made the following statement indicating the stand of the union of India in this regard:

It is stated on behalf of GOI that it keeps all notifications it has issued under AFSPA, under constant review. It states that even in future while the notifications themselves may not mention the period it will review all future notifications within a period of at the most one year from the date of issue and it continued, within a period of one year regularly thereafter. As far the current notifications are concerned, their continuance will be reviewed with a period of three months from today. The government may also review or revoke the notifications earlier, depending on the prevailing situation.

Since the inception of the constitution we have been treating the trouble in the Northeast’s militancy problem. The government’s peace dialogue should be initiated instead of granting unaccountable immunity to the Army and paramilitary forces. The DO’s and Don’ts set out by the Supreme Court while reviewing the constitutionality of the Armed Forces (special power) Act have been forgotten. In a pertinent parliamentary debate, the then Home minister K. C. Pant suggested to repeal the security legislations like AFSPA. This special Act is fundamentally against National Human Rights Provision. Under section 4 & 6 of AFSPA, 1958, excess power has been given to the commissioned military officers to deal the terrorists activities. Even when they suspect any individual they can shot him. No prosecution can be started without prior permission of the central government. It is against the international human rights laws like ICCPR, 1966 UDHR 1948, Convention against torture. In the domestic sphere the NIA Act 2008 is a new milestone to combat terrorism and has made a break through in Burdawan blast case that took place in 2nd October 2014 by exposing the module operating under the patronage of Jamutul Mujahideen Bangladesh (JMB) and its connection with ISIS (Islamic State of Iraq and Syria). This investigation agency can also make investigations of the offences under the acts enacted to implement international treaties agreement, conventions and resolu-
tions of the United Nations its agencies and other international organisations.

The fact finding team of Counter Terrorism Committee of Security Council of UN should be allowed to search fact, prepare the report and submit the same to ICC in case of terrorist act on non international armed rebellion to harmonies the international humanitarian law and international human right laws. To facilitate this in the interest of human rights it is the urgent need for the government of India to ratify the Rome' Treaty, 1998.

The present legal order, international criminal law in particular encompasses a great many aspects to create a new International legal regime to prevent and fight international terrorism is quite possible. As long as most terrorist offenders can be effectively dealt with under the existing legal framework. One should not despair that a comprehensive convention will not be agreed upon in the short term. Every efforts should made to increase the impact and effectiveness of the present Legal instruments and their implement procedures. By reshuffling certain instruments and by placing existing material in a different limelight it is easy to see that a new international legal order focusing on prevention of terrorism has firmly emerged. This is a positive development which deserves to be strongly supported. Only by providing strong robust legal framework can the war against terrorism be successful. A good deal of job has already been done but much more lies ahead. It is a paramount importance that the legal world provides the badly needed support to their counterparts in the world of action.