CHAPTER- VI

CONCLUSION

The USA PATRIOT Act, 2001 was legislated by US Congress and signed by President Bush as the operative law of the land was primarily to address the 9/11 tragic shock, fear, threat and how to prevent any future such episode. It was enacted basically to intercept and obstruct terrorism within the United States and abroad. The main objective of the law was to optimize the security of the nation-state, the US. It is based on the assumption that if the state was secured then the nation and the state would obtain security. Because in the US there is functional democracy with active bi-partisan parties especially, Republican and Democratic parties, there has been debate whether measures to attain security of state would entail security of people of United States or human security! In fact, the executive especially, the White House, President Bush and the national security Departments to justify its promoted legislation has upheld that USA PATRIOT Act was outcome of balancing national security and civil liberties objectives.

Every nation-state including the US, followed a national security policy which suits it most, depending on it’s international relations, geographical location, social fabrics, cultural, and diplomatic capabilities. And the primary actors in creating and implementing US national security policy now include the US Congress, the Department of State, the Department of Defense, the Department of Justice, the Department of Energy, the Department of Homeland Security, the FBI, the CIA and the FEMA or Federal Emergency Management Agency. The US Congress which includes the House of Representatives and the Senate plays a vital role in the national security policy making and in initiating, debating and concluding laws for the nation.

The draft Patriot Act was introduced in the Congress on 19 September, 2001. However, due to Congressional opposition broad power, the act was revised and introduced on 2nd October in the Senate. On 23rd October it was introduced in the House. Significantly, by 24 October, the US Congress, the Senate and the House passed the act without any major debate in the Congress, neither did the House and Senate Judiciary Committee held any hearing. The voting pattern of the Senate and House debate was significant. 357 out of 432 House members voted in favour of the
bill and 66 voted against it. Majority of Representatives as many as 211 and 145 Democrats constitute the approval of the Act. Only 66 Representatives voted against the bill constituting 62 Democrats and only 3 Representative.

Nevertheless, House support for the act was bi-partisan. In the Senate, the Act was almost unanimously passed by 98 Senators out of 100. Thus, Senate bi-partisan support for the Act was overwhelming. It was only in the reauthorization of the Patriot Act in 2005, 2006 and 2009 some reservations and opposition was exhibited by members of Congress. These reauthorizations was pursued because of sunset laws of the Act. There was debate on the reauthorization of the Act, especially on Wiretap Records, Business Records and “Long Wolf” provision. Nevertheless, the voting pattern of the Senate and House during the Bush administration did not change substantially in number compared to the act when it was passed in 2001. The clinching issue on the passage of the Act was the Bush Administration’s convincing affirmation of combined existence of terrorist threat. Thereby, reiterating the upholding of nation security pre-eminence over civil liberty. President Bush in his State of the Union address in January 2003 stated that the US ‘does not need a permission slip’ to defend itself. The US can and will act unilaterally in defence of perceived threats. Even the Democratic controlled Congress (Senate and House) during Obama’s Administration reauthorized the Act not repealed it, in spite of many Democratic and Senators and Congressmen were sympathetic of safe guarding civil liberties at the cost of national security. President Obama signed on 27 February, 2010 reauthorizing the Act for one year.

The historic incident of terrorism of 9/11 once again, made the people of America to review the arrangement of national security with civil liberties. In a situation, where in a threat to national security revealed, aspects of civil liberties become a distance possible thing on the part of a nation. Consequently, following the 9/11 episode, President George W. Bush has upheld that in order to protect civil lives and liberties, a strong national security is indispensable. He thus, went ahead with a stricter form of legislation on national security, called as the USA-PATRIOT Act, 2001. This act had upheld, national security and armed the state to defend, and empowering state machinery for attaining optimum security for individual at the cost of circumscribing the individual liberty.

The nature and the scope of the USA PATRIOT ACT have been very vast. The act is not only known for its provisions for intercepting and obstructing terrorism
in the US and to fighting "war of terrorism" around the world but it has also been able to disqualify certain essential civil liberties of the people. In Title-I, the act provides for enhancing domestic security against terrorism. The first and foremost measure the Bush Administration has taken to wipe out terrorism is to increase domestic security by counter terrorism fund, sense of Congress condemning discrimination against Arab and Muslims, to increase funding for technical support center at the FBI, to request for military assistance, to expand National Electronic Crime Task Force Initiative and Presidential Authority.

In Title-II, the act provides for enhanced surveillance procedures. The authority to intercept wire, oral and electronic communications relating to terrorism. The enactment of Sec.201 amends Sec. 251(1) of the title 18, United States Code. Sec. 2516(1)(c) of title 18, USC is amended by striking and section 1341, relating to fraud mail got inserted as felony violation of section 1030. In Title-III, the act provides for various measures against international money laundering, abatement and anti-terrorist financing. This is a replica of International Money Laundering Abatement and Financial Anti-Terrorism Act, 2001 which contains in three subtitles. While, in Sub-title A, International Counter Money Laundering and Related Measures are provided and in Sub-title B, Bank Secrecy Act Amendments and Related Improvements are provided. In Title-IV, Protection of Border is provided. This is an important measure to fight against terrorism. While, Sub-title A, provides for protecting the northern border, but Sub-title B, is for Enhanced Immigration Provisions, and Sub-title C, provides for Preservation of Immigration Benefits for Victims of Terrorism. This is a welfare measure. As per provision of Sub-title A, the Attorney General is authorized to increased the number of personnel on to the Northern Border for security reasons. It has been realized by the national security policy that the US is vulnerable to terrorism and terrorists, if the northern border will not be sentinel appropriately. The Title-V, has been an obstacle-removing chapter. In this title the act provides for removing different obstacles to investigating terrorism. In Title-VI, the act provides for victims of terrorism, public safety officers and their families. In Title-VII, the act provides for increased information sharing for critical infrastructural protection. That not only the US citizens are threatened due to terrorism but a lot many systems are too exposed to terrorism and in the absence of a well knitted system of information sharing, the entire exercise may be futile. Such a logic has given rise to the idea of information sharing at all levels but in Title-VIII,
the act has strengthened the criminal laws against terrorism. It has been agreed by the experts that along the line of US citizens, all the property and establishments including schools, colleges and universities, public and private offices, important buildings, rail ways, airports and airplanes, ports and ships, monuments, and critical infrastructures etc are exposed to terrorists attacks. The Title-IX of the act provides for Improved Intelligence and responsibilities of Director of Central Intelligence regarding foreign intelligence collected under FISA, 1978. In a world of changing technology, the operating style of crimes and criminals too have been changed. Title-X is a miscellaneous provision which contains review of the department of justice, sense of Congress, definition of electronic surveillance, venue in money laundering cases, and crimes against charitable Americans and limitation on issue of Hazmat Licenses and so on.

But the application of the Act is very different. The act not only applies to the whole of the United States of America unlike any other law which has application within the administrative authority or sovereignty of the state but to the entire world. It takes cognizance of all those activities of terrorism and prescribes measures accordingly. This means that it is applicable to any kind of terrorism and terrorist activities in the US and around the world. Any person or organization or even nation which is involved in any of the activities listed in the act can fall within the applicability of this law. It not only talks about terrorism and terrorist related activities but it also talks about lawful combatants unlawful combatants and so also enemy combatants at large. It deals with right from interception to obstruction to deportation and detention of culprits.

The Patriot Act while, passed by the Congress without major opposition to it the civil society outside Congress, especially the NGOs challenged the Act for undermining civil liberties and human rights. The major NGO namely the ACLU registered a strong opposition to the Patriot Act, especially the idea of indefinite detention and captives. It pleaded for the detainees’ right to counsel and right to be heard before the court of law. It has always talked about inhuman punishment and sexual abuse of under trials at various detention facilities. It stood against administration empowering, electronic communication surveillance, as undermining American citizens’ privacy. Another NGO American Library Association, (ALA) strongly criticized the Act’s provisions relating to examining library records, business records, purchase records and medical records.
Electronic Frontier Foundation, another civil liberties organization advocate of First Amendment Protection, criticized the Act for authoritarinism, and undermining democracy. They question the power of FBI to check and monitor a person's Internet habits and website visits. The National Lawyers Guild strongly criticized the ‘search and seizure’ measures, secret surveillance, extraordinary police power, branding of Muslims as terrorists and discrimination against the Middle-Eastern people. It questioned the authenticity of deportation and detention of foreigners also. The Lawyers Committee for Human Rights criticized the Act for large scale violation of human rights. They pointed out that the act promoted anti-Muslim feeling, hate crime and torture on human body and mind, racial profiling, ill-treatment of prisoners and restricting immigration into the U.S. Other NGOs like American Booksellers Foundation, EPIC, Feminist for Free Expression, National Coalition Against Censorship have carried out their campaign against the act for violation of civil liberties and human rights and assertion of authoritarianism and unilateralism by the national security community which included the President and his national security aspects and the Congress.

It may be note worthy that the functioning democracy in the United States allowed a debate on the relevance of Patriot Act for the security of the United states, People and state. The actors of the civil society especially, NGOs and the Executive, the Congress and the Judiciary were part of the debate in justifying and criticizing the Act. The debate reveal that the executive including the White House, the President, the National Security Agencies, especially, the Department of State, the Department of Defense, Department of Justice, FBI and CIA were reauthorizing the national security and civil liberties concerns to meet the proclaimed terrorist threat both from inside and outside. The NGO actors of the civil society while, proclaiming and advocating civil liberties and human rights issues were equally involved in rearranging and balancing national security and civil liberties concerns. As the proponents and advocates of civil liberties were different from the advocates of national security, the balancing of national security and civil liberties was major challenge to the respective advocates.

To strike a balance between national security and civil liberties is a most tough job on the part of political leadership and security community including the national bureaucracy. Even though, attempt to balance national security and civil liberties is an old phenomenon, there has always been conflict between them. The enactment of
national security legislation has always given rise to a curtailment of civil liberty. The present study have observed that to find the right balance between a citizen's right to be free and undue government intrusion and a government's duty to protect national security. The national security thus, while, goes with law, civil liberty goes with freedom. The national security is an indispensable tool to protect populace from outside attacks.

The USA PATRIOT Act of 2001 thus, was passed by the United States to rewrite the balance between national security and civil liberties. But in this attempt, however, national security of the United States got emphasized and civil liberties were limited. The impact of the Patriot Act was such that living a normal life for a citizen became too tough and their privacy rights were restricted by the law. As a result of this an anti-Patriot Act feeling grew up in the United States leading to further amendments in the law. The "growing public concern about the impact of the USA PATRIOT Act promoted Congressman Bernie Sanders (I-VT) to introduce legislation in February 2003 to counter some of the most egregious provisions of the law." While, in the House, Representative C.L. Butch Otter (R-ID) tried to withhold funding for "sneak and peak" searches of private property, Representative Joseph Hoeffel (D-PA) introduced a bill known as "Surveillance Oversight and Discloser Act of 2003" to curb certain provisions of the FISA. But in the Senate, Senator Barbara Boxer (D-CA) introduced a bill known as "Library and Bookseller Protection Act of 2003" and Senator Russell Feingold (D-WI) introduced another bill as "Library, Bookseller, and Personal Records Privacy Act". All these and other Congressional efforts to amend the Act were defeated. Therefore, despite Congressional cautions and disruptions, the growing resentments by the public, civil libertarians and constitutionalists the most stumbling provisions of the Patriot Act could not be amended or repealed or expired till date. Although, civil liberties are essential and indispensable for Americans, they have realized in the recent times that in the absence of a strong national security policy, they will neither be able to protect their constitution nor national wealth, institutions and American citizens.