



THE ARMS ACT, 1959: A LEGAL ANALYSIS AND COMPARATIVE STUDY WITH USA.

-Karandeep Singh, LL.M, University Institute of Legal Studies, Chandigarh University.

-Dr. Shailja Thakur, Assistant Professor, UIILS, Chandigarh University, SAS Nagar.

“The answer to crime is not gun control, it is law enforcement and self-control”

-Alan Keyes

ABSTRACT

Human have always prioritized their safety from various harms present in society, like animals, natural calamities, accidents, and even fellow human beings. Safety from each of the above requires a different approach, hence, for safety from an individual one needs to have a weapon to defend himself. Society needs to have control over who can and who cannot use weapons and arms, for this government has laid down certain provisions and laws related to arms and ammunition, referred to as the “arms act”. These arms acts in India have existed since the state existed. In historical books like “Arthashastra” by Kautilya, there are provisions given about how, when, and who can use arms like swords, spears, etc. that were used in that period. In India, the main law related to arms provisions was introduced by the Britishers to restrain Indians from using and possessing arms. This arms control act was passed by Britishers mainly in the year 1878, but it was quite biased, the restrictions were put only on Indians and not Europeans who resided in India. The principal gun control act is that of 1959, which restricts people without a license to own, manufacture, sell, use, or trade any arms and ammunition. It is to be noted that every country has different perceptions and laws related to arms. Some countries like the United States of America, have more flexible and less strict laws than India. In fact, in America, possession of arms is considered to be their tradition, which is also safeguarded by the Second Amendment Act, which makes owning arms a legal right in America. Thus, in India, the possession of arms is a privilege but in America, it is a right.

The study will focus on the Present Scenario of the Arms Act, with a comparative study with that of America. The paper primarily focuses on the Arms Act of 1959, with a comparison to America and its Second Amendment act, the thesis will also discuss the legal overview, historical background, and prohibitions related to arms and ammunition in both India and America.

Keywords: Arms, Ammunition, India, America, Gun Culture, Gun Violence.

INTRODUCTION

An Arm which was like a blessing to primitive man and he mainly used to do hunting and protect himself from wild animals, has now turned into a curse for the modern man. People now see arms as something only used to murder or harm someone, which is quite true if we see the recent census of homicides and killings taking place with the help of firearms. India has been ranked fifth in a survey of countries, with the highest number of deaths in 2019 i.e. 14,710 casualties caused by gun violence. According to the provisional data of the CDC¹, 48,117 people died by guns in 2022, an average of 1 person every 11 minutes. Thus, arms laws are essential to control and reduce such violence by guns taking place, these arms laws are present in almost every country and the same everywhere. These laws are referred to as the Arms Act.

Arms Control tends to break the security dilemma, if there were no laws to control the use of firearms and anyone could use it, it is then obvious that the crime rates would gradually increase which would affect society and cause fear in people. Anything in excess amount is hazardous, and one is well aware of how harmful weapons can be. In India, the main law for arms control was made in 1959, which is the most remarkable and significant one. The Arms Act of 1959 mentions the acquisition, possession, manufacture, sale, import, export, and transport of arms and ammunition in India². It also underlined the provisions related to the licenses in sections 13 to 18 of the Arms Act. Furthermore, it mentions of powers and procedures given to government officials to enforce and implement the act and the offenses and penalties associated with breaking the rule. Thus, according to this act, a person not having a license is prohibited from manufacturing, possessing, and selling ammunition and arms. Trade without a license is also punishable and prohibited.

The Arms Act of 1959 was made to maintain laws and order to curb the ferocity and brutality occurring due to arms and ammunition. It was made to replace the Indian Arms Act, of 1878 which was made by the Britishers. In the presented thesis a detailed discussion related to various problems related to arms, manufacture, selling, and trading of arms, and a comparison of India and the United States will be presented.

HISTORY OF ARMS ACT IN INDIA AND USA:

There always existed some arms laws in ancient India as nothing can be absolute and the formation of states is considered to be for the protection of the human population, for which the arms could have been a danger. Kautilya, who is recognized as one of the finest lawmakers was an advisor to Chandragupta Maurya. He is known for his finest works of Arthashastra where in chapter 18 of the book he talks about the duties of arms depo chief³. The keeper of the army was told to keep a check on the usage and quality of arms and their manufacturing. Chankya also cleared that whoever will keep or use arms for any wrong means or to harm someone will be subjected to punishment. He also states that arms used except for self-defense or in a passion of anger will be considered punishable as well.

¹ Report available at <https://publichealth.jhu.edu/2023/cdcprovisional-data-gun-suicides-reach-all-time-high-in-2022-gun-homicides-down-slightly-from-2021> (visited on 15 Nov. 2023).

² Nikara Liesha Fernandez and Pragma Agrahari, "Arms Act, 1959", Article on iplader.in (visited on 15 Nov. 2023).

³ Ashok kumar shukla (ed), "Kautilya Arthashastra" Vol 1 (Parimal Publication PVT. LTD 2019).

The Mughals were the ones to introduce firearms in India. The Mughal Empire in India was founded by Babur in 1526, who was a chieftain from present-day Uzbekistan. The Mughals seemed to have access to European guns or had copied the European style to manufacture the guns by Humayun's reign as history defines him as owning a double-barrelled gun in 1539. It can be seen in the pages of history that heavy artillery was a very essential component of the Mughal army, especially under the rule of its early emperors. Muslim rulers had put no restrictions on the use or possession of firearms. Soon after that in 1600 the Britishers entered India, in the beginning, they too did not interfere with the people possessing arms. Soon in 1873, the first uniform regulations were introduced by the Britishers to import cannons and firearms on certain British – Indian ports, under a statutory authority. Here six forms of licences were bought and they are as follows:

1. License for importing arms
2. For collectors of customs
3. For the transportation of arms from one British province to another one
4. To manufacture firearms
5. To carry firearms
6. To possess arms

These rules and regulations related to arms were amended from time to time. The law of 1860, was replaced by the Indian Arms Act of 1878. This is considered to be the most major and recognized of all the previous arms acts passed in India. The act is seen as a major lesson the Britishers learned from the outrageous outbreak of 1857⁴. This act was opposed by leaders like Mahatma Gandhi and other great leaders, he said that like the other deeds of Britishers, this act of not allowing Indians to possess arms was another misdeed. The act was amended several times but the act continued to be in practice till India got its Independence from the British i.e., 1947. India thus then got a chance to frame its own arms laws which were not biased towards specific sections of society and were the same for all. Hence, in 1959, when Pt. Jawaharlal Nehru was the prime minister of the country, India framed its first arms laws as a democratic state. Then the most recent amendment of 2019, stated provisions for the registration of firearms, for establishment of a central database, and restricting types of firearms for civilians⁵.

The United States of America sees guns as a part of their culture and tradition, the owning of gun rate is the highest in that of America globally, which is also protected by the Second Amendment Act. This attitude of owning a gun goes back to The American Revolutionary War.

The time led to the rise of traditions of hunting, militias, and self-defense. To begin with very start Americans started using firearms to hunt for food, this was when the American society was Agrarian. At this time hunting was one of the passions and norms in American society. Thus, unlike India people of America see the gun culture as a part of their being, and as a protector for them since the early phases of their history⁶. Even

⁵ “The Arms (Amendment) Bill, 2019.

⁶ Robbert J. Spitzer, “*Gun Law History in United States and Second Amendment Rights*” Vol. 80, Article on scholarship.law.duke.edu (Visited on 17 Nov. 2023).

though there was a lot of bloodshed in early spheres and times of America there is no one to blame for it, as there was a lack of good administration and people for surviving killed. People use guns for their self-interest. Later the Bill of Rights was amended in 1789, and according to the Second Amendment Act, all Americans had the right to bear arms. Thus, it became a constitutional right of people to possess arms. There have been many amendments in the Second Amendment Act like in the years 1938, 1968, 1986, 1993, 1994, 2003, and the most recent one in 2022 that brought changes into who can possess firearms, at what age, and how much tax is to be imposed on the owner. Thus, we saw a drastic difference between the evolution of firearms and arms laws in two popular nations of the world, and how firearms are viewed by the people of two countries.

PRESENT SCENARIO OF THE GUN CONTROL LAWS IN INDIA AND STATISTICAL ANALYSIS

The Arms Act of 1959 has been amended several times in the following years 1971, 1983, 1985, 1988, 1995, 2010, 2016, and most recently in the year 2019. The amendments are required in any rule or law so that the rule suits the society. The possession of firearms in India is not a legal or constitutional right, it is thus a right that is provided and protected by an act, which does not promote gun usage but simply puts restrictions on who, how, when, and where a person can possess arms. The crime rate all over the world is dramatically increasing, thus there is a need for every country to have laws and regulations related to gun ownership for the welfare of society so that people feel safe and the chances of crimes like homicide, mass shootings, etc are reduced. The arms laws in India are considered to be the most rigid around the world, it is also to be noted that the most powerful and developed nation America has made possession of guns a constitutional right, which is protected by the 2nd Amendment Act. The crime rate in America by gun is also very high, there are often cases of mass shooting from all over the country.

The arms amendment of 2019 was introduced by Minister of Home Affairs, Amit Shah in the Lok Sabha on 29 November 2019⁷, then it was passed by Lok Sabha on 9 December 2019 and it was passed in Rajya Sabha on 10 December 2019. The bill seeks to amend the Arms Act, of 1959. It aims to decrease the number of licensed arms and ammunition that a person can possess, it has also increased the penalties and put a heavy amount for certain offenses defined in the Act. There are a few new categories of offenses that are introduced in this amendment.

1. Licensing of firearms: The act states that an individual must have a license to possess, carry or use any firearms. There is a set for how many firearms a person can own, thus a person cannot possess more than three firearms. However, there is an exception that licensed firearm dealers may acquire more than three. This Bill reduced the limit from three to two, for an individual to possess any arms. This includes licenses that are given on an inheritance or heirloom basis. The bill provides one year to submit the excess firearms,

⁷ The Hindu, "Lok Sabha passes arms (Amendment) Bill" (December 09, 2019, New Delhi).

to the officer who is in charge of the closest police station or with a licensed firearm dealer as specified. If the owner is a member of the armed forces, the firearms must be submitted with a unit armory. Within 90 days from the one year, the firearms will be delicensed. There is also an increase in the duration of the validity of a license from three years to five years.

2. **Restriction on firearms:** The act states that no one shall manufacture, sell, use, transfer, test, or do proofing of firearms without a valid license. It also bans the shortening of firearm barrels. This bill also prohibits getting or procuring unlicensed firearms and converting one category to another without a license. It also allows the members of rifle clubs or other associations to use any firearms for the practice of target, instead of the 22-bore rifles or air rifles.
3. **Change in Punishment:** There are several amendments done to punishments for several offenses. The offenses include; Dealings in unlicensed firearms, which include manufacture, procurement, sale, transfer, etc.; shortening of firearms barrel without a license; import or export of banned arms and ammunitions. The punishment for these offenses is between three years to seven years, along with a fine. This bill extends the punishment between seven years and life imprisonment, along with a fine. However, the court may punish for less than seven years, with recorded reasons.
4. **New offences:** There are new offences introduced, which include the following; forcefully taking a firearm from police or armed forces, its punishment is imprisonment between 10 years and life imprisonment along with a fine; use of firearms in a public event or religious places that endangers human life and safety of people, punishable with imprisonment of 2 years, or fine of upto one lakh rupees, or both. The bill also prohibits illicit trafficking, which has a punishment of 10 years and life, along with a fine.

The leading states in India when it comes to having ownership of licensed guns are the Union territory of Jammu and Kashmir and the state of Uttar Pradesh. Thus Uttar Pradesh has maximum gun holders and it is followed by Jammu Kashmir and Punjab⁸. The top five states that have had a dramatic rise in gun ownership from 2016 to 2023 are as follows:

1. Uttar Pradesh
2. Jammu and Kashmir
3. Punjab
4. Madhya Pradesh
5. Himachal Pradesh

In the Union territory of Jammu and Kashmir, a ban was put on issuing gun licenses in 2018, it was thus lifted in 2023⁹. The ban was put in because a gun license racket was traced by Rajasthan Police's anti-terror squad (ATS). This revealed that many higher level public which was a state till 2019 is leading in the matters of gun ownership. The licences were only permitted till 2018 and then a ban was imposed and now in 2023. The total number of gun license holders in the UT now stands at 5,00,105, whereas in 2016 the report stated that 3,69,191 people had licenses. It is to be noted that J&K is the only union territory in the country that holds this much amount of gun licenses, whereas Lakshadweep has zero license holders.

⁸ Yaqui Ali, "Uttar Pardesh Jammu and Kashmir Lead the Country in Gun Licenses", (The Wire, July 15, 2019).

⁹ Abraham Thomas, "Alarming rise of illegal Arms" (Hindustan Times, November 1, 2023).

In terms of gun holders, Uttar Pradesh holds the first position. It has 1,329,584 license holders at present. This number has increased dramatically after the last available data, where the number of gun holders in Uttar Pradesh was 1,277,914, which means 51,670 new gun licenses have been allotted. In October 2013, the Allahabad High Court banned providing new licenses, as the public possessed five times more arms than the state police. The Allahabad bench had discovered that the police force had 213,000 personnel, equipped with 225,000 weapons, while the government of the state had issued around 11 lakh licenses to its people. The number of licenses even increased after the ban was put, the ban was lifted by the court in November 2017. According to the reports of the National Crime Records Bureau, Uttar Pradesh has reported to have 36,363 cases in 2021 under the Arms Act 1959. In Punjab, gun is considered to be a symbol of status and respect for many. Another reason could be that the state also shares a border with Pakistan and thus citizens may keep arms for their safety. Bihar is the only state compared to 2016 that has seen a decrease in gun licensing, where gun ownership has seen a decrease of 1,069. In South India, the cases of gun ownership are comparatively very low, unlike in North India. The total gun ownership in the South Indian States that are; Andhra Pradesh, Karnataka, Kerala, Tamil Nadu, and Telangana is 173,103 licences. Even the total of these states is less than Jammu and Kashmir, Uttar Pradesh, Punjab, and Madhya Pradesh. Among these states, Karnataka has the highest number of gun ownerships.

GUN LAWS PREVAILING IN USA:

The most developed and powerful nation in the world, that is America has the most flexible gun laws in the world. In America possessing guns is considered to be a part of their tradition, as guns have had a significant importance and impact in the history of American Independence. In America owning a gun is a constitutional right, which is protected by the Second Amendment act in the constitution of America¹⁰. The number of cases related to mass shooting and homicide continue to rise in America, the reason some is considered to be the gun culture practiced there. There are often debates in the country about the need for stricter gun laws in the country, between supporters and nonsupporters of the law. Throughout the world whenever a case of mass shooting is recorded, the government of the country in response to the incident puts up restrictions on gun ownership, which is seen to be effective in some cases, the mass shootings, homicides, and suicides often become less. However, America where such cases have been reported several times has put no such restrictions on gun laws in response to the incident. The Second Amendment Act which was adopted on December 15, 1791, provides every citizen of the country to possess arms, which the government cannot infringe because it is the part of Bill of Rights. This is a right that gives an individual a right to protect himself when provoked, resist oppression, and defend the country when needed to be. The gun law however differs from American state to state, due to its federal structure. In most states, a person should get a license and register himself with the police to own the gun. In many states, people are asked to avoid carrying guns in public gatherings and places, whereas in some it is allowed. Two very interesting gun laws prevail in the country, namely castle doctrine and the stand-your-ground law, which gives a person the full right to use

¹⁰ Alan Korwin and Michael P. Anthony, "Gun Laws of America: Every federal gun law on the books"⁵⁰ (Bloomfield Press, September 1, 2009).

whatever force necessary to protect himself for private defense. Several states also ask their people to have a background check before getting firearms. Since 1764, several incidents of mass shootings have been reported which count up to 200.

The following category of people is allowed to possess firearms in the United States of America:

1. Citizens of USA
2. Resident aliens permanently living in the USA.
3. Non-immigrant aliens admitted under specific categories.

The gun control Act 1968, requires a person to be 18 years of age to own shotguns or rifles and ammunition. Other types of firearms are only permitted to people 21 years of age.

• A Comparative Study between gun laws in India and the USA

The right to bear arms in America is protected by the Second Amendment Act. Thus, it is a legal and constitutional right in America to possess arms, as the Americans believe that gun culture is a part of their prestige and tradition. The Second Amendment is a part of the Bill of Rights which makes it a fundamental right for individuals to bear arms, the amendment is always a hot debate topic in the country. However, in India, the right to bear arms is not available, but the constitution in the same place doesn't restrict anyone from possessing arms, except for Article 19(1)(b) which provides a right to assemble peacefully without firearms. In India even though possessing arms is not a right, competent people can still carry arms with a valid licence¹¹.

The laws presently are also a result of the colonial period in both India and the United States of America. The country of America has stuck to the old Second Amendment made years before, however, India has several times amended the laws as a changing society. A report by Small Arms Survey reveals that the total number of guns present in the country of America was 393 million in the year 2018. The same year India was the second leading country in possessing guns, the number of guns in India was close to 71.1 million. The rate of owning a gun in America is 120 guns per 100 persons, whereas in India it is 5 guns per 100 people. This also shows how the people of America are too drawn toward possession of guns. Just like the policy difference in both countries gun possession also differs in both nations, especially in violence related to guns. American society has 12 times more crime rate associated with guns than that of India. Homicide rates in America are as high as 60% in the United States of America whereas in India it is just 10% in 2021. Hence, the restrictive policies of India have served as a great way to reduce the crime rates from guns in the country, while in the United States of America, the gun laws are permissive so they directly or indirectly add to the gun crimes. Thus, the variation in gun laws and constitutional rights in both countries is responsible for the difference in perspectives of people related to guns. Violence related to guns is higher in the country of America than in India due to its not-so-strict gun policies. However, this doesn't mean that India is fully free from gun crimes, but the cases are less than in America if compared, and the reason is considered to be the strict gun laws of the country.

¹¹ Anay Mridul, "Buying guns: How does India compare with the US?" (CNBC TV18, August 22, 2019).

CONCLUSION AND SUGGESTION:

Gun matters have always been a matter of discussion in India. Some people in India view guns as harmful objects used only by terrorists, or to prevent terrorists they are used by the army. Whereas, on the other hand, guns are considered an object of tradition and privilege in the country of America. The laws in India are considered the most strict and rigid ones, which are the product of great critical thinkers and gun activists. There is an essence of the old British gun laws in the present Arms Act. The old arms law was biased towards Indians, and thus it was important after the independence to amend it. The Arms Act of 1959 is considered a step of security that ensures public peace, security, and the welfare of society. The act requires every individual who wants to possess firearms to get a valid license for specified firearms. It also bans the export and import of illegal firearms. It checks the manufacture, sale, trade, possession, and carrying of firearms. The act prevents the weapon from going into the wrong hands. The act tries to decrease the number of crimes that take place with the help of guns. The Arms Act of 1959 has helped in decreasing the homicide rate in the country. It has been amended several times according to society's needs.

The thesis was a comparison between gun laws in India and America, where it can be noted that the possession of arms is a legal and constitutional right, which is safeguarded by the Second Amendment act in the American constitution and included in the Bill of Rights. But with this, we can also note that the crime rate in America is much more than that of India. In America too there are often controversies related to the Second Amendment act, as the words of the amendment are not clearly stated.

By the study carried out above, about the gun laws prevailing in India in comparison to the laws in the United States of America, the researcher would like to put forward the following suggestions:

1. India has great arms laws and possession of arms should not be made a legal right in India as it would encourage gun crimes in the country. The main motive of the Arms Act of 1959 was to control the number of guns possessed by the citizens of the country.
2. There must be proper checks on the licensed people, and where and how they use the firearms allotted to them.
3. The citizens to whom the guns are allotted must be fully competent and know how the gun is to be used.
4. The fines and penalties for infringement of the gun laws must be regularly increased, so that people adopt more responsibility towards the weapons they possess.