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A Critical Study of Law Relating to Arms and Ammunition

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ABSTRACT

To keep the peace and order in a country, the government sets a set of rules and laws. The defence and security forces safeguard the country from both foreign and domestic threats. These groups are armed with firearms and have the legal right to maintain order and security in the state by using reasonable force or, in extreme situations, excessive force. In India, weapons and ammunition are strictly controlled, and are available only to the armed services and law enforcement agencies. However, there are strict regulations on the usage and possession of firearms in private hands. "The Arms Act of 1959 prohibits the unlicensed sale, manufacture, possession, acquisition, import, export, and transit of firearms and ammunition", and is the primary piece of gun control legislation in the country. To prevent any form of rebellion or mutiny against the British rulers, the British initially imposed gun control laws in India to restrict Indians from holding firearms.

1. Introduction

The Indian Arms Act of In 1959, the Indian Parliament passed the specific goal of unifying also modernizing the country's regulations on firearms and ammunition. The threat posed by criminals and terrorists who gain access to illegal firearms was too great to ignore¹. Chapter II of the same Act makes it plain that the goal of the law must be as all-encompassing as much as possible to address every aspect of the purchase, storage, production, distribution, import, export, and transport of firearms and bullets. Chapter Fourth (IV) of the Act provides additional information on the techniques used by the government to regulate the use and ownership of firearms and ammunition in India and it includes provisions for the issuance of orders for detention, search, seizure, and arrest.

2. History of the Arm Act:

The Sepoy Mutiny of 1857 was the first time Indians used weapons in a fashion that concerned the British, who were in control at the time. When the British handed the famous Enfield pistol on to the Indian sepoys during colonial times, an unhappy episode occurred. However, the sepoys had to adopt a technique called "biting off" they were the lubricated cartridges, which made from a combination of pig and cow tallow. Among the Indian sepoys, this tactic led to considerable bloodshed and unrest because it was meant to upset the religious sensibilities of Muslims and Hindus. The sepoys were motivated by this to rise up in revolt against the British. After witnessing how swiftly the Indians could put aside their differences and unite to fight against the British, the British a decision was made that the best way to prevent future widespread demonstrations against them were to pass a law that forbade the Indians to acquire any arms. The Indian Arms Act of 1878 was a result of this. This law made it such that only Native Americans with proper permits or permission could legally own firearms. Lord Lytton, who served as viceroy of India at the time, signed this Act into law, further restricting the production, sale, possession, and carrying of firearms². The hypocrisy of this Act was evident in the fact that

Europeans were spared from its restrictions while Indians detected in possession of any form of weapon were subject to severe penalties and punishments. After India gained its independence, the government acknowledged the necessity The Indian Arms Act of 1959 allowed some law-abiding citizens to possess firearms for self-defense, hunting, and crop protection. This Act followed the 1962 Arms Rules.

Analysis of Arms Act, 1959:

The purchase, ownership, industrialized, transaction, transit, import, and export of weapons and bullets are all governed under the Arms Act of 1959. It bans the use of a certain type of "prohibited" weapons and ammunition and lays out the consequences for breaking its rules. Except when expressly permitted by the federal government, manufacturing, selling, and using illegal weaponry and ammunition are all prohibited under Section 7 of the Act³. According to Section 27(3), any violation of Section 7 to leads in a person's death "must be penalized by death." In *State of Punjab v. Dalbir Singh, a case from 2006*, the Supreme Court considered a challenge to Section 27(3) of the Act. The judgment may have significant ramifications for national criminal law in addition to its impact on the Act in question.

Amendment of Section 27

- Section 27 of the law as written stated that "possession of any weapons or ammunition with the intent to use them for any illegal purpose would be punishable by up to seven years in prison and/or a fine".
- When terrorist and anti-national activity increased, this clause was revised in 1988 to provide for severe punishments.

Arms Amendment Bills, 2011

- On December 12, 2011, Shri P. Chidambaram, the "minister of home affairs, introduced the Arms (Amendment) Bill, 2011 in the Lok Sabha". On January 13, 2012, The Standing Committee on Home Affairs received the Bill. By March 31, 2012, the Committee is anticipated to have presented its

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details. The Bill modifies the 1959 Arms Act, which establishes the rules governing weapons and ammunition⁴.

- The original Act's Section 7 prohibits the industrialized, transaction, and use of restricted weapons and ammunition absent a specific central government authorization. Any violation of Section 7 that results in a person's death "will be penalised with death," according to Section 27(3).
- It's mandatory death penalty is removed from the Act by the Bill. Violations are "punishable with death or imprisonment for life and shall also be liable to fine," according to the Bill.
- The Bill gives the change that became effective on May 27, 1988, retroactive effect in order to cover a criminal appeal that is now being heard by the Supreme Court.
- In "*Mithu v. State of Punjab (1983)*", the Supreme Court concluded that imposing a compulsory death sentence without allowing for the use of legal prudence was "harsh, oppressive, and unjust." This is stated in the statement of objects and reasons. In accordance with these remarks, the Bill aims to alter the Act.
- The 2011 Arms Amendment Law was classified as a lapsed bill.

Criticism and way ahead

Numerous changes are predicted. The home ministry created the Arms regulation in 2015, which examined safe firearms handling and storage, procedures for combining multiple licenses, and authorization for add-on licenses for members of the family. The bill, however, did not find a solution. The Ministry of Home Affairs, Government of India, then covertly revealed a new set of Arms Rules that were going to substantially alter the legal status of gun ownership in India. The revised "Arms Rules 2016" were announced to take effect on July 15, 2016, although they weren't immediately accessible on the e-gazette website. A brief review of Arms Rule 2016 reveals that the ministry authorities did not use any logic or rationale when creating these laws. Pellet weapons, paintball guns, replicas, as well as blank weapons are all now to be handled similarly to firearms. All will be required to have an arms license, and if they don't, they'll face the same consequences as 7 to 14 years for a terrorist or criminal in possession of an AK-47 in prison.

Current Indian Legislation Concerning Firearms

The procedure for obtaining a permit to legally carry a firearm is complicated. India has some of the harshest gun restrictions in the world as compared to the United States of America, where the freedom to keep and bear arms is protected by the constitution. It takes at least a year to get a firearms licence because of the many steps one must take to demonstrate the government that he or she is experienced to be the owner of a firearm. However, only those who meet the requirements of Section 3 of the Act and who have a valid firearms licence issued in accordance with its guidelines are allowed to possess any firearms or ammunition⁵. Under the Act of 1959, a citizen may possess no more than three firearms at any given time. The Act requires that any excess funds be turned over to the local police station no later than 90 days after the Act's implementation date. According to "Section 14 of the Act, the licencing authority may deny a person a firearms licence if they meet either of the following criteria: (1) they are prohibited from possessing arms and ammunition under the provisions of this Act or under any other law currently in force; or (2) they are found to be of unsound mind or age of minority".

In Section 2 of the Act, guns are classified into two broad categories:

- Army, Central Paramilitary, and State Police are the only authorised users of Prohibited Bores (PB).
- NPB, or non-prohibited bores, can be used by anyone with a valid gun licence⁶.

These variances are primarily based on the bullet's diameter or thickness, or the bore, of the firearm.

In the wake of the terrorist attacks in Mumbai in 2008, new laws were

passed restricting gun ownership. Banned bore rifles were legal for military personnel and family heirlooms to use prior to the attack. Since the assaults, however, Prohibited Bores weapons can only be purchased by persons who can demonstrate a "severe and imminent harm" to oneself or one's families on account of where they reside or their line of work. A licence for a Prohibited Bore can only be issued by the Central Government.

Prohibition: "Rockets, bombs, grenades, shells, missiles" items designed for torpedo duty and undersea mining are all examples of the "prohibited ammunition" listed in Section 2 (1) (h) of the Act. Ammunition containing any kind of hazardous liquid, gas, or similar substance is also included on this list.

In addition to the weapons listed in "Section 2(1) (i) of the Act, any weapons designed to discharge noxious liquids or gases are also prohibited. For example, modified rifles that release missiles continually upon squeezing the trigger or until the magazine carrying the missiles is empty. As an example, the list includes both artillery and anti-aircraft and anti-tank weaponry".

Possession, acquisition, production, and sale of the aforementioned prohibited firearms and ammunition are limited by the law enacted by Section 7. Furthermore, the bylaw restricts the transaction or move of firearms to minor for the purposes of acquisition or possession under Section 9 (those people who have not reached the age of 21). "Sections 24A and B of the Act forbid the possession of notified arms and the carrying of notified firearms in or through public places in disturbed areas".

Deposition of illegal weapons: "If a person's licence has expired, been revoked, or been suspended in a way that renders continuing possession of guns illegal, that person must immediately surrender any firearms in his or her possession to the proper officer of a police station, as required by Section 21 of the Act".

6. Relevant case laws in the Arms Act:

Article 21 defines the right to own weapons and ammunition as a basic right.

"*Ganesh Chandra Bhatt v. Dist Magistrate, Almora & Ors.*⁷ to be the present situation. The Constitution's right to self-defense is a part of the right to life and liberty guaranteed by Article 21. The question in 1993 was whether the right to keep and bear arms was a part of any of these". These are the court's findings in this case:

- The ability to possess and use weapons is an integral part of Article 21's guarantee of the right to self-defense.
- If an applicant for a licence to enjoy a firearm that is not forbidden by law does not hear back from the appropriate authorities within three months of submitting the required paperwork, the licence is presumed to have been approved.
- Worshipping weapons throughout "the Dussehra and Diwali festivals has its roots in the Mahabharata and is linked to a citizen's self-respect and dignity, both of which are required for the exercise of the right to life guaranteed by Article 21".

This ruling abolished lawful security for the right to allow guns, however it was later reinstated after the 1993 Bombay bombings. in view of the fact that, the Arms Act has been the sole source of law that regulates and protects the right to bear arms.

A primary element of guilt for an offence punished under Section 25 of the Arms Act is conscious possession:

In this case "*Hari Kishan v. State (NCT Of Delhi) (2019)*"⁸, The question at hand concerned the meaning of the word "possession" as it related to "Section 25 of the Arms Act", which defined the offences for which a person could be sentenced to a minimum of three years in jail (with the possibility of an additional seven years) and a fine. Police at the Saket metro station allegedly found a live cartridge in the petitioner's bag during a routine check. This finding led to immediate charges under "Section 25 of the Arms Act" being brought against the petitioner. Petitioner expressed shock and disbelief after learning of the false allegation that he had a reside cartridge in a side bag of his suitcase,

although he had been fully unaware of its presence. There was no evidence of wrongdoing on the part of the petitioner. It was also determined that he had no firearms or other weapons on him. In addition, he had no idea the live cartridge even existed, therefore it is safe to assume he did not intentionally carry it. According to him, it would not be a violation of the Act to merely have custody of anything without knowing what it is. This is because, as he explained it, Section 25 of the Act covers conscious possession. Petitioner also drew the court's attention to Section 45 of the Act, which states that "the acquisition, possession, or carrying by a person of minor parts of arms or ammunition which are not intended to be used along with complementary parts acquired or possessed by them of any other person" does not constitute the committing of a crime. Because the petitioner's claims were supported by the court., the First Information Report (FIR) against him and the proceedings that arose from it were thrown out. The Court found that there was not even a "whisper of averment in the First Information Report (FIR) as averred in the charge sheet that the petitioner was aware of being in alleged conscious and knowledgeable possession of the ammunition in question." "*Rachelle Joel Oseran v. The State of Maharashtra and Others (2018)*⁹, which involved the question of conscious possession and the court in that case also reached the same conclusion as in the aforementioned case".

7. The Arms (Amendment) Bill, 2019:

On November 29, 2019, "Mr. Amit Shah, the minister of home affairs, introduced the Arms (Amendment) Bill, 2019 in the Lok Sabha. The Arms Act of 1959 is being modified by the bill. It aims to reduce the number of licenced firearms that each person is permitted to own while also strengthening on some Act-related offences". New categories of crimes are also included.

License required purchasing firearms: In accordance with the Act, "a licence is required to purchase, possess, or carry any firearm. A licence can be obtained for up to three weapons (with certain exceptions, such as for licenced firearms dealers)". The proposed legislation would cut the number of legal firearms from three to one. This also applies to permits granted based on inheritance or heirlooms. The Bill stipulates that the extra firearms must be turned in within a year to the police officer overseeing the neighbourhood police station or, if applicable, to a registered firearm dealer¹⁰. If the owner is a service member, the weapon can be stored in the unit's armoury. The licences for the surplus firearms will be cancelled 90 days after the conclusion of the year. The Bill also extends the three-year licence validity period for firearms to five years.

Ban on Firearms: According to the Act, it is illegal to make, sell, use, transfer, convert, test, or proof guns without a licence. Additionally, it forbids reducing a gun's barrel or turning fake weapons into real ones without a licence. Additionally, the Bill outlaws acquiring or procuring unlicensed firearms as well as converting unlicensed firearms from one category to another. Additionally, "it permits members of rifle clubs or associations to practice shooting targets with any firearm rather than just 22-bore or air rifles".

Increased penalties: Several crimes have had their punishments modified by the Bill. There are consequences for (i) producing, acquiring, selling, transferring, or converting firearms without a license, (ii) illegally shortening or converting firearms, and (iii) illegally importing or exporting firearms. Imprisonment for three to seven years and a fine are possible outcomes for these offences. The proposed law increases the current penalty by making a fine and a jail term of seven years to life mandatory. Without a license, the acquisition, possession, or carrying of banned ammunition is punishable by a five- to ten-year term of imprisonment and a fine under the Act. The proposed legislation extends the penalty to include a fine and a sentence of seven to fourteen years in jail. With documented justification, a court may require a sentence that is less than seven years.

Without a license, dealing in forbidden firearm (including their manufacture, transaction and repairs) is likewise punished by the law, which carries fines and sentences of up to imprisonment for life. The

minimum sentence is increased under the bill from seven to ten years. The existing death penalty has been changed to earlier the death penalty or a life sentence plus a fine in cases where Using unlawful weapons and ammo causes someone to die.

New offences are added by the Bill: These include "(i) stealing a firearm from the police or the military forcibly, which carries a sentence of between 10 years and life in prison and a fine, and (ii) using a firearm in celebratory gunfire that endangers human life or the safety of others, which carries a sentence of up to two years in prison and a fine of up to one lakh rupees, or both. Celebratory gunfire is the use of firearms to fire ammunition at events like weddings, public gatherings, and religious services"¹¹.

The Bill also lists the offences that organized crime gangs and illegal trafficking conduct. "Organized crime" refers to ongoing illegal action by an individual, either as a syndicate member or on its behalf, in order to obtain financial or other rewards. A team of two or more individuals committing organized offense is referred to as an organized criminal syndicate. A member of a syndicate who is found in possession of a weapon or bullets in contravention of the law faces a sentence of between 10 years and life in imprisonment and a fine. any person who deals in unlicensed firearm (including their manufacture or auction), converts a firearm without a license, or imports and exports unlicensed weapon on behalf of a syndicate will also be subject to this punishment.

The exchange, purchase, or auction of weapons or bullets into or out of India that are either not marked in accordance with the Act or break its rules is included in the definition of unlawful trafficking in the Bill. Illegal trafficking is penalised by a fine and a term of imprisonment ranging from 10 years to life.

Tracking of firearms: The central government may establish regulations for the detection, investigation, and analysis of illegal production and trafficking of firearm and bullets from manufacturer to buyer.

Subsets of Indians, those who engage in competitive shooting, were concerned about the proposed limit on the number of firearms they might legally own. A statement from the Ministry of Home Affairs notification on February 24, 2020, permitting skilled the storage of more weapons by shooters, in an effort to comprehend and address these concerns and ammunition than previously allowed. This change was made to allow for increased ammunition usage during practise.

Conclusion:

In an effort to rein in the market and cut down on illegal activity, the "Ministry of Home Affairs has made maintaining a National Database of Arms Licenses a top priority. As of January 2021, despite legislative steps to lessen the threat of illicit weapon offences, India had the second-highest number of deaths from the use of weapons, the vast majority of which were unregistered and illegal. Since the United States is a developed country with higher literacy and lower crime rates than India", it is impossible to draw meaningful comparisons between the two nations in this area. India is making steady progress, but there is still a long way to go. Many Indians, dating back to India's own celebrated independence fighters, have discussed the merits of establishing a legal right to accept weapons. According to Mahatma Gandhi, the Act that forbade an entire people to own firearms will be remembered as the worst among the several crimes done in India by the British Empire. If we want to learn how to use firearms and get rid of the Arms Act, this is a great chance to do both. If the middle class steps up to help the government in its hour of need, confidence will return and gun control will be abolished. As opposed to this, Dr. B. R. Ambedkar, had a very different opinion on firearm, as evidence by his report "I personally myself cannot conceive how it would be possible for the State to carry on its administration if every individual had the right to go into the market and purchase all sorts of instruments of attack without any let or hindrance from the State." "The history of Human Rights or Human Rights Jurisprudence is as old as the development & civilization of human."¹² "In compliance of Rule of Law, in democratic & republic

India, subjecting to principle of natural justice, Equity, justice, good conscious, morality and welfare state, not only Human rights but also all rights are incomplete, meaningless and worthless without the Enforcement system.”¹³ “Speedy justice must be delivered without having violations of Human Rights and its Law with respect to aforesaid slept Governments must be wake up now with vigilance mandatorily because sovereignty is found in people for welfare of people.”¹⁴ “Human Rights & its Law must be included in the syllabus as compulsory subject of Schools, Colleges, Universities and in other required institutions or organizations or establishments and Human Rights & its Law must be taught or imparted education, knowledge and literacy as well as above also to Employees, workers and all persons from time to time.”¹⁵ “The cases which have the doubt that the cases of abuse of process of law as “abuse of Law or process” or “abuse of Justice” then should be categorized separately.”¹⁶ “The Conception of Time Bound Delivery of Justice” should be incorporated in the Law to ensure the speedy justice.”¹⁷ “The cases of abuse of process of law should be dealt with very sensitively, minutely and seriously, subjecting to the depth examination and scrutiny with very specific state of mind to ensure fair delivery of justice.”¹⁸ “No person can unnecessarily be compelled to face the trial or legal proceeding on the basis of false charges or allegations and fabricated factual matrix. It is the deprivation of life, liberty and security of person in a very serious way as the gravest violation of human right. The required things should be done for it as expeditiously as possible.”¹⁹ “The criminalization of men should not be done in democratic, society the same should be balanced as needed in according to time and circumstances because men and women both are complement and completion of each another. The prima facie presumptions or assumptions at the very initial stage with the preconceived ideology to get its predefined consequences against men should not be made that this particular act may surely be initiated and incepted only by men and with it, such a treatment full of preconceived ideology to get its predefined consequences against men should not be given in today’s changing world of abuses of law whereas it should be independent and fair. The physiology of human brain as preconceived ideology to get its predefined consequences against men should not be borne in mind for the enforcement of laws to deliver the justice by people and society.”²⁰ “The deprivation and denial of the life and liberty of humans are very common in spite of the enforcement system of human rights, subject to exceptions.”²¹

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