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# A Legal Analysis of the Arms Act 1959 in the Light of Criminal Law: Issues and Challenges

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## 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. The government has to apply some laws and regulations in order to provide order in the country. These are defense and security agencies which help defend the state against all external and internal threats. These organisations have the force of arms as well as the mandate of maintaining the state security and peace at all ages when necessary through prop ia and at some times through prop over some proportion, in accordance with the circumstances of the case. While Mangaldas & Associates was deeded in rights whereby it could use firearms and ammunition, it has been stipulated that only the armed forces and the law enforcement departments of India should possess arms and ammunition. However, offenders of the law can only buy firearms after passing through strict legal procedures put in place for residents of the United States of America. The legislation in the nation pertaining to firearms and gun control laws is primarily governed by the Arms Act, 1959. It also outlaws the importation, exportation, transportation, production, sale, and possession of weapons and ammunition if they are not

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*licensed. Apprehensive of the Indian's ability to stage a rebellion, the British introduced gun control measures in India for it deemed that Indians should not have access to weapons to stage another uprising or mutiny. In conclusion, the provisions laid down under the Arms Act of India are looked into a detailed manner in the course of this research work.*

**Keywords:** *The Arms Act, 1959, Sections, History, Salient features, Amendments, Types of Arms, Licenses, Powers of the Governments, Non-Application of Arms act, USA Law, Criticisms, Suggestions, Case Law.*

## I. INTRODUCTION

In a civil society, the government and the state are answerable to the people; as such, they must effectively manage the nation, contribute to its advancement, and provide its members with the necessities of life. Law and order must be upheld, crimes must be avoided, and residents must be shielded from both external and internal attack. The State uses its armed forces, like the army, and law enforcement organisations, like the police, to defend its population. The state has given these defence troops and agencies permission to use lethal force and weapons as needed to defend the state and further its objectives.[\[1\]](#) In the course of their numerous missions, they employ such force and utilise weapons to stay one step ahead of the opponent tactically, offensively, and strategically.

Guns, firearms, armaments, ammunition, and other defence hardware are all considered weapons. These are the tools and things that are used to cause injury, pain, and damage. These tools and weapons are mostly employed in defence, law enforcement, hunting, and other related contexts as well as in situations involving conflict, warfare, and criminal activity. Since the State is in charge of upholding defence and law and order, it is typically forbidden for citizens to own or use firearms. Almost every nation has laws and regulations that either forbid or control the ownership, use, transfer, manufacturing, possession, and manufacturing of firearms by its citizens. The majority of nations have tight gun laws and policies, which place strict restrictions on the acquisition and use of firearms, arms, and other weapons. However, certain nations like the United States of America, Pakistan, Nigeria, Senegal, etc. have restrictive gun laws and a vibrant “gun culture.”

## II. THE ARMS ACT, 1959

The Indian Parliament passed the Arms Act, 1959 specifically to modify and combine the many laws pertaining to weapons and ammunition. This was an urgent need to stop the threat posed by those in possession of illicit weapons who would use them to commit crimes and inflict

damage on society. As stated clearly in Chapter II of the same Act, its goal is to be as comprehensive as possible to cover every aspect of the purchase, possession, manufacturing, sale, import, export, and transportation of weapons and ammunition. Likewise, Chapter IV of the Act describes the methods and powers that the government and other authorities may employ to control the use and ownership of firearms and ammunition in India. These include provisions for detention orders, search warrants, arrests, and seizures. Based on information provided by the Small Arms Survey in its report on Civilian Firearms Holdings, 2017, Indian civilians are estimated to hold 7,11,01,000 firearms, or roughly one out of every five out of 100. In addition, there were 97,00,000 registered firearms in India in 2017 compared to an astounding 6,14,01,000 unregistered firearms in the same year. The main piece of legislation controlling gun ownership in India is the Arms Act, 1959. An additional amendment to The Arms Act, 1959 was passed in December 2019 with the passage of The Arms (Amendment) Act, 2019.

### **III. 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 2019, 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 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. on an inheritance or heirloom basis. The bill provides one year to submit the excess firearms,

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 Punjab . The top five states that have had a dramatic rise in gun ownership from 2016 to 2023 are as follows:

- Uttar Pradesh
- Jammu and Kashmir
- Punjab
- Madhya Pradesh
- 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 2023<sup>9</sup>. 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.

#### **IV. AMENDMENT ACT 2019**

Recently, the Arms (Amendment) Bill, 2019 was presented to the Lok Sabha. The Arms Act, 1959, which governs the possession of weapons in India, is amended by the Bill. According to the Act, weapons include swords, anti-aircraft missiles, and firearms. Law enforcement agencies have reported an increasing correlation between illicit gun ownership and criminal activity, according to the Bill's Statement of Objects and Reasons. In this regard, the Bill aims to lower the maximum quantity of firearms that an individual is permitted to own while also stiffening the penalties for certain Act violations.<sup>[7]</sup> Additionally, the Bill creates additional crime classifications. Three licenced firearms are permitted per the Arms Act of 1959. This would be reduced to one handgun per person under the Bill. This would also cover any weapons that might have been inherited or passed down as family heirlooms. After the Bill is passed, excess firearms must be turned in to the closest police station or authorised arms dealer within a year.

The Bill increases a license's term from three to five years. The Bill includes a few new news crimes. e.g., the Bill makes it illegal to take a handgun from law enforcement or the armed services by force. If this is done, the penalty consists of a fine and a term of imprisonment ranging from 10 years to life. The Bill also criminalises careless gun use, such as celebratory gunfire at weddings or religious ceremonies that jeopardises people's lives or personal safety. In this instance, a fine of up to one lakh rupees, two years in prison, or both are the suggested

penalties. Also, the Bill defines “illicit trafficking.” It is described as the trading, purchasing, or selling of weapons or ammunition into or out of India, regardless of whether the weapons are marked legally or not. The Bill establishes fines and terms of imprisonment ranging from 10 years to life for illicit trafficking.

Furthermore, the Bill defines “organised crime.” “Organised crime” is described as an individual engaging in ongoing illegal conduct, either on their own behalf or as a member of a syndicate, with the intention of obtaining financial or other advantages by utilising illegal tactics, such as coercion or violence. When two or more people commit organised crime, they are referred to as an organised criminal syndicate.

## **V. TYPES OF ARMS**

Two separate classifications of firearms have been established by the Arms Act of 1959:

1. Prohibited Bore (PB).
2. Non-Prohibited Bore (NPB).

The term “bore” refers to the internal chamber of a gun or other firearm. The size of a bullet is known as its calibre, and it is based on its breadth. It might be stated that the bullet’s calibre is marginally higher than the bore calibre for someone who is familiar with how a firearm operates. However, for simplicity’s sake, a regular person may use those interchangeably.

Non-Prohibited Bore weapons include pistols with calibres of .35, .32, .22, and .380. The process outlined in Chapters II and III of The Arms Act, 1959 must be followed in order to get a licence for the possession of a non-prohibited bore firearm. Prohibited Bore firearms include semi-automatic and fully automatic weapons, as well as handguns and pistols chambered in .38, .455, and .303, as well as 9 mm handguns. Only members of the armed forces and family heirlooms were permitted to own Prohibited Bore category weapons prior to the 2008 Mumbai Attacks. Firearms in the Prohibited Bore category include semi-automatic and fully automatic firearms, handguns, and rifles chambered in 0.303 and 9mm.

### **(A) Issues and challenges**

The Arms Act of 1959 in India primarily regulates the possession, acquisition, manufacture, sale, import, export, and transport of firearms and ammunition. Over the years, several issues and challenges have emerged in its implementation and enforcement:

1. **Illegal Arms Trafficking:** One of the major challenges is the proliferation of illegal arms trafficking. Firearms are smuggled across borders, leading to increased crime rates and posing a threat to national security.

**2. Arms Licensing:** The process of obtaining a firearm license is often cumbersome and bureaucratic, leading to delays and corruption. This can discourage law-abiding citizens from seeking legal permits while also fueling the black market.

**3. Weak Enforcement:** Enforcement of the Arms Act has been inconsistent across different regions, leading to loopholes that criminals exploit. Strengthening enforcement mechanisms and improving coordination between law enforcement agencies is crucial.

**4. Firearm-related Violence:** Despite regulations, incidents of firearm-related violence, including homicides, suicides, and accidents, continue to occur. Addressing the root causes of violence, such as socio-economic disparities and inadequate mental health support, is essential in tackling this issue.

**5. Inadequate Monitoring:** There is a lack of comprehensive systems for tracking the movement and usage of firearms and ammunition. Improved monitoring mechanisms, including digitization of records and better inventory management, are needed to curb illegal activities.

**6. Obsolete Regulations:** The Arms Act of 1959 may not adequately address contemporary challenges such as the proliferation of advanced weaponry and emerging threats like cybercrime. Revisions to the legislation to incorporate modern technologies and evolving security concerns are necessary.

**7. Terrorism:** The threat of terrorism adds another layer of complexity to arms regulation. Terrorist organizations often procure firearms through illicit means, highlighting the need for stringent border controls, intelligence gathering, and international cooperation.

**8. Public Awareness:** Many citizens may not be fully aware of the provisions of the Arms Act or the risks associated with firearm ownership. Enhancing public awareness campaigns about responsible gun ownership, safety measures, and legal consequences can help mitigate misuse. Addressing these issues requires a multi-faceted approach involving legislative reforms, improved enforcement mechanisms, capacity building of law enforcement agencies, public awareness campaigns, and international cooperation to combat cross-border arms trafficking.

## **VI. CONCLUSION**

India already has some of the most severe gun laws in the world, covering a wide range of activities. This has caused only roughly 10 out of every 100 killings in India to involve a gun. Still, the use of an illicit firearm is a contributing factor in over 90% of firearm-related deaths. Controlling the illicit and unlicensed production, possession, purchase, and exchange of firearms thus becomes crucial. There is a great deal of room for improvement in this area, and



a major step in the right direction could result in an even greater decline in India's gun violence rates. In India, owning and using firearms has long been controversial and the focus of intense judicial scrutiny. Many intellectuals and proponents of gun rights have regarded India's gun restrictions and policies as among the strictest and most uncompromising in the world. The Indian government adopted new gun control regulations after independence, incorporating the main provisions of the antiquated gun laws that were in place during the British Raj. The Arms Act, 1959, which amends several outdated regulations to better suit the requirements of contemporary, independent India, is a major piece of new gun control legislation that significantly affects the country's gun restrictions.

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