
Gun Rights In India: A Myth?

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Abstract

Gun rights in India have always been relatively limited and the possession of firearms has been treated as a matter of privilege rather than a right. In this essay, legislations and judicial precedents with respect to possession of firearms have been assessed. The history of firearm legislation as well India's colonial past play an important role in the views of India's lawmakers as well as the Indian legal system, on this issue, today.

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I. Introduction

Mahatma Gandhi once called the attempts by the British colonial government to limit the possession of arms in India as “the blackest” act. However, India has a long history of legislation controlling and limiting the ownership of firearms. After the Rebellion of 1857, the British colonial rulers of India were greatly concerned about the usage of weaponry by Indians to stand up against the colonial government. These concerns led to a general consensus in the colonial government that the only way to prevent such mutinies was to prohibit the Indian subjects from carrying any kind of arms, leading to the introduction of the Arms Act of 1878. The Act limited the right to own arms to only those Indian people who had obtained prior authorization and also put restrictions on the production and sale of arms in India. Later, after independence, the Arms Act, 1959 was passed with the intention of updating the law with respect to firearms, which was laid down in the 1878 Act. Later, the Arms Rules of 1962 was passed to supplement the 1959 Act.

II. Process for Procurement of a Firearm in India

Unlike in the United States, in India, the Constitution does not guarantee citizens a right to bear arms and the procurement of firearms in India can be notoriously difficult, as the restrictions on arms in India is one of the harshest in the world. The entire process to procure a firearm in India can take up to a year and involves acquiring a license to own such firearms, as stipulated by *Section 3* of the Act.

In order to obtain a license, one must apply to the licensing body along with relevant documentation, such as, identification evidence, residence proof, proof of age and education level, income tax returns for the previous three years, a character certificate, and physical and mental health certifications. Further, the person wishing to own the firearm must be at least 21 years of age at the time of making the application, and at least 16 years old in order to hold a firearm.

The individual must also prove that there exists an imminent threat to his or her life. After the application is filed, a thorough background check is conducted by the police to ascertain the person's mental stability and lack of criminal tendencies or history and this also includes checking on the individual family members. If the license is granted, it stays valid for three years and the applicants must mandatorily attend a course on safe handling and usage of guns. The Central government can revoke the license at any time and is the final authority on matters relating to this.

III. Arms Act and Judicial Precedents

Section 2 of the Arms Act, 1959 recognizes two types of arms. Prohibited Bores or PB which can only be used by military and paramilitary personnel. Further those in imminent danger, in particular areas of the country, can own these as well. Non-prohibited Bores or NPB which can be used by anyone with a valid license to own a firearm. Bore, in this context, refers to the thickness of the bullet and a distinction has been made between arms on this basis in order to ensure that certain highly powerful firearms do not become widely circulated in the general population.

Further, **Section 2(1)** of the Arms Act prohibits a list of ammunition entirely. These mostly include weapons that can pose grave danger for the owner as well as those in the vicinity of the weapon such as rockets, bombs, weapons contain poisonous gases and liquids etc. It also includes guns which can allow the user to put pressure on the trigger until the magazine is empty. **Section 21** stipulates that arms in possession of a person must be deposited to a police station if his or her license expires or is revoked.

Section 25 of the Act, prior to the 2019 Amendment to the Act prohibited selling and possession of prohibited arms and prescribed imprisonment of 7 years at least, extendable up to 10 years. However, after the 2019 Amendment, the prescribed sentence was increased to at least 14 years which, extendable to life.

The Allahabad High Court in *Ganesh Bhatt v. District Magistrate, Almora & Ors.*¹, observed that the right to own arms was a part of **Article 21**, and was an aspect of the right to self-defense. However, this decision was overturned by the Hon'ble High court in the case of *Rana Pratap v. State of UP*², wherein it was held that carrying non-prohibited firearms is not a right under the purview of **Article 21** and further the right to obtain a license to own a firearm is no more than a privilege.

Further, in *Hari Kishan v. State of NCT Of Delhi*³, the Hon'ble High Court of Delhi dealt with the interpretation of the word 'possession' under **Section 25** of the Act. The Court held that conscious efforts on part of the individual is an essential aspect of the term 'possession' under the **Section 25**.

Recently, in *Surinder Singh v. State (Union Territory of Chandigarh)*⁴, the Hon'ble Supreme Court of India, found that the illegal use of a licensed arm is not an offence, per se, under **Section 27** of the Arms Act, 1959, rather such an act could at best be considered a misconduct under the service rules. This is unless, unless a misdemeanor under **Section 5** or **7** of the Act is proven.

¹ 1993 SCC Online All 76

² 1995 SCC Online All 979

³ CrI.M.C.No. 3865/2016

⁴ Criminal Appeal No. 2373 of 2010

IV. Conclusion

Bearing arms has never been seen as a right in India, but rather as a privilege, and due to this legislation to limit the manufacture, selling, and possession of arms has always been stringent. While important political figures in our nation's history such as Mahatma Gandhi had been sympathetic to the idea of a population being able to arm themselves in order to defend themselves against tyranny, this has never been a reality in India. The views of figures like Dr. B.R. Ambedkar, rather, were agreed upon by lawmakers in India, which is that it would be impossible to create a stable society without restricting the circulation of arms among civilians to some extent. Due to this, gun rights in India remain non-existent for the most part.