

# INTERNATIONAL JOURNAL OF LEGAL SCIENCE AND INNOVATION

[ISSN 2581-9453]

---

Volume 6 | Issue 4

2024

---

© 2024 *International Journal of Legal Science and Innovation*

Follow this and additional works at: <https://www.ijlsi.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com>)

---

This Article is brought to you for free and open access by the International Journal of Legal Science and Innovation at VidhiAagaz. It has been accepted for inclusion in International Journal of Legal Science and Innovation after due review.

In case of **any suggestion or complaint**, please contact [Gyan@vidhiaagaz.com](mailto:Gyan@vidhiaagaz.com).

---

**To submit your Manuscript** for Publication at **International Journal of Legal Science and Innovation**, kindly email your Manuscript at [editor.ijlsi@gmail.com](mailto:editor.ijlsi@gmail.com).

---

# Law Relating to Regulation of Arms and Ammunition in India: An Analytical Review of The Arms Act, 1959

---

MAHENDRA SONI<sup>1</sup>

## ABSTRACT

*The regulation of arms in India has a multifaceted history, shaped by colonial influences and contemporary security considerations. This research paper seeks to investigate the development, implications, and enforcement of arms legislation in India, particularly focusing on the Arms Act of 1959. While examining the evolution of the law relating to control of firearms in India, author has highlighted the differential objective behind legislation enacted by the British Government and Indian government respectively. This research paper emphasizes upon the primary goal of the government while enacting the Arms Act of 1959 i.e., to regulate the possession and use of firearms and ammunition, with the aim of upholding public order and safety. This paper examines the legal definitions of arms and ammunitions, the judicial understandings of relevant cases, and the societal ramifications of arms proliferation. It emphasizes the significant differences between various types of weapons, such as firearms and toy guns, and examines important legal cases that have influenced the interpretation of the law. The paper highlights the legislature's commitment to combating unauthorized access to arms in light of mounting national security and terrorism concerns. Furthermore, it explores the evidentiary prerequisites for categorizing an object as an "arm" and the legal ramifications of possessing unlicensed weapons. The paper also examines the enforcement challenges and the necessity for stricter regulations to ensure public safety. Through a comprehensive analysis of case law and statutory provisions, the paper aims to offer clarity on the legal framework governing arms in India, fostering a better understanding of the implications for individuals and society at large.*

**Keywords:** *Firearms, Ammunition, Licensing of firearms, Possession of firearms, National security.*

## I. INTRODUCTION

Regulation of weapons or firearms and ammunition play a significant role in the administration of justice due to their dual purpose in ensuring security, protection, and capability to facilitate

---

<sup>1</sup> Author is an Assistant Professor (Sr. Scale) at National Law Institute University (NLIU), Bhopal, India.

criminal activities. The possession and uses of arms, both licensed and unlicensed, poses a significant threat to social order and public safety. Consequently, the possession and usage of firearms necessitate responsible handling and adherence to safety protocols. Laws relating to firearms and ammunition across the globe are restrictive in nature and they impose stringent regulatory conditions in procuring and using guns, arms, and other weapons. The existing legal framework in India pertaining to firearms and weaponry does not acknowledge the right to firearm ownership. The acquisition and utilization of a firearm are contingent upon obtaining a valid firearm license from the relevant governing body. The primary rationale behind the enactment of laws that impose restrictions or bans on the possession of guns and firearms by civilians is to mitigate and deter instances of violent offenses, such as homicides, suicides, and shootings. Furthermore, it aims to curb the emergence of armed uprisings, insurgencies, and acts of terrorism within the jurisdiction of a state. However, Possession/Ownership of firearms and ammunition in India has been debated for long as the same is neither a constitutional right nor a legal right. The Arms Act, 1959<sup>2</sup> is the primary legislation regulating and controlling arms (including firearms and ammunition) in India supported by the Arms Rules, 1962<sup>3</sup>. Recently, considering the increase in crime within the country and across the globe, laws relating to possession/ownership of firearms in India have been further strengthened.

## II. EVOLUTION OF LAW RELATING TO ARMS IN INDIA

Prior to the imposition of colonial governance in India, Indian residents enjoyed the liberty to own firearms and other armaments without any kind of hindrance or legal restriction in this regard. This ownership of guns served the dual purpose of safeguarding oneself and upholding societal esteem and customs. The monarchs and administrators of the princely regions viewed limitations on gun ownership among their populace as unnecessary and therefore, they allowed the inhabitants of that era to possess the freedom to move about openly while bearing arms. It was not until the arrival of British colonial authorities that regulations curbing the possession of firearms by Indians were implemented. This lack of regulation instilled a sense of apprehension among the British authorities, who perceived widespread armament as a potential threat to their governance. The genesis of the Arms Act can be traced back to the era of British colonial rule in India, spanning from 1858 to 1947. The British administration implemented measures to restrict the ownership of weapons among Indians, with certain exceptions made

---

<sup>2</sup> The Arms Act, 1959 aims to control guns rather than to promote 'possession of gun' as a matter of right. An underlying object behind this statute is also "to curb, prevent and reduce crimes, felonies, rackets, and illegal acts involving guns and firearms".

<sup>3</sup> The Arms Act, 1959 has been amended in the year of 1971, 1983, 1985, 1988, 1995, 2010, 2016 and 2019 lastly.

for Anglo-Indians and British officials who retained the privilege of possessing arms. Lord Lytton (Viceroy of India) paved way for introducing a legislation pertaining to gun control laws in India by constituting a committee to make recommendations for “*control of firearms*” in India. The recommendations of the committee were accepted and made basis for the Arms Act of 1878 which was primarily aimed to restrict and limit firearms in India.

For the first time, this Act introduced the system of gun licenses to own and possess guns, marking the inception of the first gun control law in India. This legislation mandated that Indians had to acquire a license for the possession of firearms, failure to comply with which would result in fines and imprisonment. The discretion to approve or decline license applications resided with the government, providing a mechanism for oversight. The implementation of the Act effectively curbed the issuance of licenses to Indians, posing challenges to India's quest for independence. The Indian Arms Act of 1878 sought to disarm the populace entirely, a legacy that persisted even post-independence, as evidenced by the continued classification of swords, daggers, spears, spear-heads, bow and arrows as “arms” within the legal framework. While the Arms Act was applicable to the entirety of British India, the circumstances in the former Princely States exhibited notable distinctions. Residents of these states enjoyed significantly more liberties in terms of possessing and carrying a variety of arms within the confines of their respective territories.

The Arms Act, 1878 was replaced by the Arms Act of 1959, a legislative measure aimed at “*consolidating and amending laws pertaining to arms and ammunition*”. The main objective of this act was to regulate and restrict the use of arms and ammunition which were illegal rather than using it for self-defence, threat to life, or property. The act intended to enforce stringent regulations on the circulation of illicit arms and ammunition, permitting individuals to possess up to three licensed firearms were notified on 15 July 2016, replacing the arms rules, 1962. The Arms Rules 2016 came into force for the safe use and storage of arms. The parliament brought forth a renewed focus on arms control regulations in India vide the Arms (Amendment) Act 2019 to introduce “*stringent punishment for possession of illegal arms and those indulging in rash and negligent acts of gunfire, endangering the life and safety of others*”. The 2019 amendment ushered in a multitude of changes aimed at enhancing regulations surrounding licenses and associated penalties, underscoring the link between illegal firearms possession and criminal activities. Additionally, the revised legislation introduced new categories of offenses and imposed restrictions on the number of arms per individual, encompassing inherited or heirloom firearms. Notably, the 2019 Act has enhanced the penalties for existing transgressions such as unauthorized conversion of firearms, illicit manufacturing, sale, procurement, export,

and import of arms.

### (A) Literature Review

- The research paper titled “*Conscious & Unconscious Possession of Ammunition and its Consequences under The Arms Act, 1959*”<sup>4</sup> examines the legal nuances surrounding the possession of firearms and ammunition, particularly focusing on the implications of the Arms (Amendment) Act, 2019. It discusses the conditions under which individuals can carry firearms and ammunition, emphasizing the necessity of having a valid license; otherwise, it constitutes an offence. The research highlights the distinction between conscious and unconscious possession, noting that if a person can prove they were unaware of possessing illegal items, it may serve as a valid defense in legal proceedings. Furthermore, the paper examines the legal framework for police searches of properties suspected of housing illegally possessed firearms, outlining the circumstances under which such searches can occur without a warrant. It also addresses the definition of ammunition and the legal responsibilities of individuals regarding possession, which can vary based on the type of firearm and its classification. This research paper comprehensively analyses the legal implications of firearm possession and the responsibilities of both individuals and law enforcement in ensuring compliance with the law.
- The research paper titled “*An Analysis of Indian Arms Laws with Respect to Licensing Procedures*”<sup>5</sup>, provides a comprehensive examination of the Indian Arms Act of 1959 and its licensing procedures, emphasizing the challenges associated with regulating arms in India. It addresses the ease with which firearms can be obtained, often without stringent legal formalities, leading to increased criminal activities involving guns and ammunition. The paper highlights the necessity for stricter enforcement of licensing regulations and discusses the Arms (Amendment) Act of 2019, which aims to bolster control over arms possession and impose penalties for violations. Furthermore, it conducts a comparative analysis of gun laws in other countries, particularly the USA and UK, to demonstrate the diverse approaches to gun control and their impact on reducing gun-related crimes. The research concludes that raising awareness and adherence to arms laws, coupled with stricter penalties for non-compliance, are crucial

---

<sup>4</sup> Abhishek Gurawa, *Conscious & Unconscious Possession of Ammunition and its Consequences under The Arms Act, 1959*, Vol.3 Issue 3 International Journal of Legal Science and Innovation (2020).

<sup>5</sup> Varshita Girishi and Priyank Jagawanshi, *An Analysis of Indian Arms Laws with respect to Licensing Procedures*, Vol. 4 Issue 5 International Journal of Law Management & Humanities (2021).

for improving the current state of arms regulation in India.

- The research paper titled “*The Arms Act, 1959: A Legal Analysis and Comparative Study with USA*”<sup>6</sup> examines the historical and contemporary implications of the Arms Act of 1878 in India, highlighting its role in regulating firearm ownership and usage. The author notes that the Act of 1878 was brought into existence to maintain control over the Indian populace by restricting access to firearms leading to suppress any resistance against colonial rule. The paper discusses the current landscape of gun ownership highlighting recent statistics from the National Crime Records Bureau (NCRB), indicating a rise in firearm-related crimes. The research underscores the stringent licensing procedures and the discretionary powers of authorities in issuing gun licenses, reflecting ongoing tensions between regulation and public safety. This research paper also provides a comprehensive overview of the challenges posed by firearm legislation in India, emphasizing the need for a balanced approach to ensure both national security and individual rights.
- The research paper titled “*Laws Relating to Arms and Ammunitions in USA & India: Responsibility of a Country or a Citizen*”<sup>7</sup> delves into the intricate intersection of gun ownership, legislation, and violence in India and the United States. It analyses the significant role of illegal firearms in criminal activities in India. The paper explores the impetuses behind gun ownership, with an emphasis on protection being the primary reason cited by gun owners in USA & UK. The research paper also examines the gender dynamics in gun ownership, revealing that men are more likely to own guns than women. The paper concludes by advocating for stricter laws and policies to curb illegal weapon violence, suggesting that decisive action against major players in the arms trade is necessary for setting a societal example in both countries.

### **(B) Important Definitions**

Section 2(a) defines “**acquisition**” to mean, “*with its grammatical variations and cognate expressions, includes hiring, borrowing, or accepting as a gift*”.

Section 2(b) defines “**ammunition**” to mean “*ammunition for any firearm, and includes—*  
*(i) rockets, bombs, grenades, shells and other missiles, (ii) article designed for torpedo service and submarine mining, (iii) other articles containing, or designed or adapted to contain,*

---

<sup>6</sup> Bikash Sen Deka, *The Arms Act, 1959: A Legal Analysis and Comparative Study with USA*, Vol. 1 Annual International Journal on Analysis of Contemporary Legal Affairs (2021).

<sup>7</sup> Yashvi Goyal, *Laws Relating to Arms and Ammunitions in USA & India: Responsibility of a Country or a Citizen*, Vol. 6 Issue 4 International Journal of Law Management & Humanities (2023).

*explosive, fulminating or fissionable material or noxious liquid, gas or other such thing, whether capable of use with firearms or not, (iv) charges for firearms and accessories for such charges, (v) fuses and friction tubes, (vi) parts of, and machinery for manufacturing, ammunition, and (vii) such ingredients of ammunition as the Central Government may, by notification in the Official Gazette, specify in this behalf’.*

Section 2(c) defines “**arms**” to mean “*articles of any description designed or adapted as weapons for offence or defence, and includes firearms, sharpened and other deadly weapons, and parts of, and machinery for manufacturing, arms, but does not include articles designed solely for domestic or agricultural uses such as a lathi or an ordinary walking stick and weapons incapable of being used otherwise than as toys or of being converted into serviceable weapons*”

Section 2(e) defines “**firearms**” to mean “*arms of any description designed or adapted to discharge a projectile or projectiles of any kind by the action of any explosive or other forms of energy, and includes—*

*(i) artillery, hand-grenades, riot-pistols or weapons of any kind designed or adapted for the discharge of any noxious liquid, gas or other such thing,*

*(ii) accessories for any such firearm designed or adapted to diminish the noise or flash caused by the firing thereof,*

*(iii) parts of, and machinery for manufacturing, firearms, and*

*(iv) carriages, platforms and appliances for mounting, transporting and serving artillery”.*

Section 2(h) defines “**prohibited ammunition**” to mean “*any ammunition containing, or designed or adapted to contain, any noxious liquid, gas or other such thing, and includes rockets, bombs, grenades, shells, missiles, articles designed for torpedo service and submarine mining and such other articles as the Central Government may, by notification in the Official Gazette, specify to be prohibited ammunition”.*

Section 2(i) defines “**prohibited arms**” to mean – “*(i) firearms so designed or adapted that, if pressure is applied to the trigger, missiles continue to be discharged until pressure is removed from the trigger or the magazine containing the missiles is empty, or (ii) weapons of any description designed or adapted for the discharge of any noxious liquid, gas or other such thing, and includes artillery, anti-aircraft and anti-tank firearms and such other arms as the Central Government may, by notification in the Official Gazette, specify to be prohibited arms”.*

Section 2(k) explains “**transfer**” to mean “*with its grammatical variations and cognate expressions, includes letting on hire, lending, giving and parting with possession*”.

### III. LICENSING AND PROHIBITION

#### (A) For Acquisition and Possession

**Section 3** of The Arms Act of 1959 mandates that the acquisition, possession, and carriage of firearms and ammunition in India are contingent upon holding a valid license granted under the Act's provisions and associated rules. However, an individual may, without possessing a personal license, transport firearms or ammunition under the direct supervision or written authorization of a license holder for purposes of repair, license renewal, or authorized use by the license holder. Furthermore, the Act limits the possession of firearms to a maximum of two per individual, with exceptions granted to authorized personnel. These restrictions, however, do not extend to licensed firearms dealers or members of government-licensed or recognized rifle clubs and associations utilizing .22 bore rifles or air rifles for target practice.

#### (B) For Manufacturing and Sale

**Section 5** of the Arms Act of 1959 stipulates that engaging in any activity related to firearms and ammunition, including manufacturing, sale, transfer, conversion, repair, testing, or possession for such purposes, requires a license issued in accordance with the Act and its associated rules. This comprehensive restriction encompasses all firearms and ammunition types specified by the Act. However, the Act permits individuals to sell or transfer firearms and ammunition lawfully possessed for personal use to individuals legally entitled to possess such items under the Act or other applicable laws, without necessitating a separate license for this specific transaction.

#### (C) For Import and Export

**Section 10** of the Arms Act, 1959 notes “*No person shall bring into, or take out of, India by sea, land, or air any arms or ammunition unless he holds in this behalf a licence issued by the provisions of this Act and the rules made thereunder.*”

#### (D) Prohibition

**Section 7** of the Arms Act, 1959 prohibits acquiring possession, or manufacture or sale of prohibited arms or prohibited ammunition. It reads: “*No person shall (a) acquire, have in his possession or carry; or (b) use, manufacture, sell, transfer, convert, repair, test or prove; or c. expose or offer for sale or transfer or have in his possession for sale, transfer, conversion, repair, test, or proof, any prohibited arms or prohibited ammunition unless he has been*



*pecially authorized by the Central Government on this behalf.”*

**(E) Grant, Refusal and Variation/Suspension/Revocation of License**

**Section 13** of the Act states that the licensing authority, after such inquiry, if any, as it may consider necessary, and after considering the police report may either grant the licence or refuse to grant the same. The licensing authority shall grant a licence where the licence is required by a citizen of India in respect of a smooth bore gun having a barrel of not less than twenty inches in length to be used for protection or sport or in respect of a muzzle loading gun to be used for bona fide crop protection. **Section 14** of the Act provides that the licensing authority shall refuse to grant a license where (a) such licence is required in respect of any prohibited arms or prohibited ammunition; (b) where such licence is required by a person who is disqualified by law; or of unsound mind; or for any other reason unfit for a licence under this Act; (c) refusal is necessary for the security of the public peace or for public safety to refuse to grant such licence. Further, reasons for such refusal must be recorded in writing and informed to the applicant. But, the no license shall be refused merely on the ground that such person does not own or possess sufficient property.

In contemporary times, all regulatory bodies responsible for granting licenses are insisting that individuals applying for any kind of firearms license must demonstrate a “grave and imminent threat” to their well-being as a prerequisite for obtaining a license. This stipulation can be deemed as unreasonable, considering that the majority of individuals seek firearm possession for the purpose of safeguarding themselves against arbitrary acts of aggression, which have shown a consistent increase over the last few decades, rather than due to a specific existing danger. Typically, only individuals of notable status or substantial affluence encounter such threats from delinquent factions, thereby indicating that this requirement may be construed as an endeavor to automatically disqualify ordinary, law-abiding citizens from procuring a firearms license, reserving this privilege exclusively for the elite and influential members of society.

**Section 17** of the Act contains provisions for the variation, suspension and revocation of licences and empowers the licensing authority to vary the license conditions or suspend a licence for such period as it thinks fit or revoke a licence. Such suspension/revocation of license can be done when: (i) the licensee is disqualified by law or goes unsound or has become for any reason unfit; or (ii) it is necessary for the security of the public peace or for public safety; or (iii) it is found that the licence was obtained by the suppression of material information or based on wrong information was provided by licensee while applying for it; or (iv) any of the

conditions of the licence has been contravened.

#### IV. JUDICIAL APPROACH

In the case of *State of U.P. v. Jaswant Singh Sarna*<sup>8</sup>, while allowing the petition for renewal of an arms dealer license, the court noted that the Arms Act, 1959 is a progressive legislation and highlights the liberal views of the people which was noticeably absent in the Arms Act, 1878.

In the case of *Gunwant Lal v. State of Madhya Pradesh*<sup>9</sup>, the Supreme Court examined a very important question i.e., “What is meant by possession in the context of this section 25(1)(a)? Is it that the person charged should be shown to be in physical possession or is it sufficient for the purposes of that provision that he has constructive possession of any firearm or ammunition in contravention of Section 3 which prohibits him to be in such possession without a licence?”

The Court held that: “The possession of a firearm under the Arms Act in our view must have, firstly the element of consciousness or knowledge of that possession in the person charged with such offence and secondly where he has not the actual physical possession, he has none-the-less a power or control over that weapon so that his possession thereon continues despite physical possession being in someone else. If this were not so then an owner of a house who leaves an unlicensed gun in that house but is not present when it was recovered by the police can plead that he was not in possession of it even though he had himself consciously kept it there when he went out. Similarly, if he goes out of the house during the day and in the meantime someone conceals a pistol in his house and during his absence, the police arrives and discovers the pistol he cannot be charged with the offence unless it can be shown that he had knowledge of the weapon being placed in his house. And yet again, if a gun or firearm is given to his servant in the house to clean it, though the physical possession is with him nonetheless possession of, it will be that of the owner..... As we said earlier, the first precondition for an offence under Section 25(1)(a) is the element of intention, consciousness or knowledge with which a person possessed the firearm before it can be said to constitute an offence and secondly that possession need not be physical possession but can be constructive, having power and control over the gun, while the person to whom physical possession is given holds it subject to that power and control.”

In the case of *Mahendra Singh v. State of West Bengal*<sup>10</sup>, a bag containing live cartridges and an unlicensed gun was discovered in the accused’s possession. The accused underwent

---

<sup>8</sup> AIR 1968 All 383.

<sup>9</sup> AIR 1972 SC 1756.

<sup>10</sup> 1974 SCC (3) 409.

prosecution and was found guilty by the Trial Court under Sections 25(1A) and 27 of the Arms Act, 1959. The Court determined that the arms found in the appellant's possession could not have been without his knowledge and intention based on the available evidence. Consequently, his conviction under Section 25(1A) was deemed appropriate. However, there was a lack of evidence to substantiate the conviction under Section 27 thus, the conviction under this section was held to be unsustainable.

In the case of *Guljarsing v. State of Maharashtra*<sup>11</sup>, the individuals accused were discovered to be in possession of certain weapon-like items as outlined in the seizure memo, including a hand-crafted pistol with a tubular projection, trigger, and hand-rest. The memo did not specify whether the pistol was operational or if the trigger could discharge any ammunition from the small iron tube projection. The primary issue deliberated by the High Court of Bombay pertained to whether the prosecution had presented compelling evidence demonstrating that the seized items met the criteria for “ammunition” as defined in Section 2 (1) (b) and the definition of “arms” outlined in Section 2 (1) (c).<sup>12</sup> The only available evidence on this point was only that of the investigation officer who himself seized the articles and whose evidence is merely that only because he is serving for 22 years, he states that pistol can be used as a fire-arm. The court noted that for the reasons best known the prosecution have not got these arms tested nor the so-called ammunition certified from any Ballistic Expert. Even before the Courts below, this question was raised but the same has been answered relying upon the testimony of investigation officer. The Court held that the prosecution has failed to produce any material evidence to prove that articles seized are “arms”. The Court further noted that an article may

---

<sup>11</sup> 1976 CRI LJ 205.

<sup>12</sup> The Court noted: “...It is, therefore of essence, if the charge is that the accused was in possession of ammunition, that it must be told to him what type of ammunition he was possessed of and that can only be done if the prosecution is careful enough to ascertain whether the accused was in possession of the ammunition within the meaning of the provisions of the Act and if so what type. Mere visual examination of an article seized from the accused by the police in a given case may be a poor substitute. There may be articles which have a look of an ammunition but may not in fact be an ammunition. It is not for the accused to explain the things which the prosecution wants to rely upon..... Similar is the position with regard to the definition of the term “arms”. The definition takes in the articles designed or adapted as weapons for offence or defence. Merely because an article has a trigger or a handrest and has a look like that of a gun or pistol, that would not be enough to show that it is a weapon which can be used for the offence or defence. The prosecution is bound to establish that the article brought before the Court and seized from the accused in a given case is a weapon in that it is capable of inflicting into serviceable weapons. .... Though an article that looks like a weapon may be seized from the accused, it may still not be the 'arm' within the definition of the Act and it will have to be shown by evidence that the thing seized was a weapon within the meaning of the definition, in a given case the very article tendered in evidence may substantiate the requirement and the Court will be in a position by the very tender of that to find so. In a given case if the articles are sharp-edged and deadly weapons, the Court may by mere look at it form its opinion and may conclude that it answers the terms of "arms". But when the case is of a mechanical device and complicated weaponry same said opinion could not be formed. A thing that looks like a gun or pistol must possess, to be an arm, a potentiality of a weapon, for it must be shown that it has capacity to eject the ammunition by its very design. Unless evidence is forthcoming the matter should not be allowed to rest on mere visual examination.”

look like a “firearm”, but it may on test prove to be a useless gadget or a mere showpiece. Therefore, the court acquitted the accused persons.

In the case of ***Kailash Nath v. State of U.P.***<sup>13</sup>, the Supreme Court held that “*granting an arms licence is a privilege rather than a right*”. The court also noted that Article 21 of the Constitution, which guarantees the protection of life and personal liberty, does not apply to the *right to bear arms*.

In the case of ***Ganesh Chandra Bhatt v. District Magistrate***<sup>14</sup>, a petition was filed requesting issuance of the writ of mandamus to instruct the authorities to review the petitioner’s request for obtaining a Revolver license under the Arms Act, 1959. The court allowed the writ petition and instructed the authorities to issue a firearm license to the petitioner. Further, the court also noted that any application for a non-prohibited arm license must be decided within a period of 3 months and failure to do so will result in automatic granting of the license.

In the case of ***Sanjay Dutt v. State through C.B.I.***<sup>15</sup>, Sanjay Dutt was discovered to be in unlawful possession of firearms, including a prohibited Ak-56 assault rifle. The defendant failed to provide a legitimate license for these weapons, although he argued that he had acquired them to safeguard his family against potential threats. He was formally charged under Sections 3 and 7, in conjunction with sections 25(1A) and (1B) of the Arms Act, 1959, and apprehended with allegations suggesting his procurement of the illicit arms from the notorious terrorist Dawood Ibrahim. In 2006, Dutt was ultimately convicted under the Arms Act and sentenced to six years of imprisonment, a term subsequently reduced to five years by the Supreme Court. The Supreme Court, even upon review, affirmed his guilt, emphasizing the critical importance of adhering to the national Arms legislation for the preservation of peace and order within the country.

In the case of ***Mursalim Shaikh and Ors. v. State of West Bengal***<sup>16</sup>, the accused alongwith other persons, having a dagger, chisel, and pistol had forcibly halted a rickshaw and started compelling passengers to handover their valuables. All of them absconded from the scene of crime after extorting valuables and money from these passengers. It was discovered that the pistol (which the accused was carrying) was not licensed under the Arms Act, 1959. Accordingly, these persons were convicted under Section 25 of the Arms Act in addition to conviction under the relevant provisions of the Indian Penal Code of 1860. While hearing the

---

<sup>13</sup> AIR 1985 All 291.

<sup>14</sup> AIR 1993 All 291.

<sup>15</sup> (1994) 6 SCC 86.

<sup>16</sup> C.R.A. No.179 of 2008 (Calcutta High Court).

appeal, High Court Judge observed: *“I am of the view that once the illegal arms were recovered from the possession of Morsalim and he could not offer any plausible explanation with regard to possession the learned Judge rightly convicted him under the said provision. Such conviction, in my view, should not be interfered with.”*

In the case of *State of Madhya Pradesh v. Ayub Khan*<sup>17</sup>, the accused was found in possession of a country made barrel gun, two cartridges of ammunition, and fifty grammes of unlicensed explosives. The trial court, first appellate court and High Court awarded sentence lesser than prescribed under Section 25(1)(a) of the Arms Act, 1959. The Supreme Court noted: *“Proliferation of arms and ammunition, whether licensed or not, in the country disrupts the social order and development, vitiates law and order situation, directly contributes towards lethality of violent acts which needs to be curbed. We are sorry to note the law enforcing agencies and to certain extent the courts in the country always treat the crimes lightly without noticing the havoc they can create to the ordinary peace loving citizens of this country and to the national security and the integrity and the unity of this nation.”* Further, while examining the question pertaining to award of sentence lesser than the minimum punishment prescribed under the Arms Act, 1959 the Supreme Court noted that *“Legislature, in its wisdom, has fixed a mandatory minimum sentence for certain offences keeping, possessing arms and ammunition is a serious offence which shall not be less than three years. Legislature, in its wisdom, felt that there should be a mandatory minimum sentence for such offences having felt the increased need to provide for more stringent punishment to curb unauthorised access to arms and ammunition, especially in a situation where we are facing with menace of terrorism and other anti-national activities. A person who is found to be in possession of country made barrel gun with two round bullets and 50 grams explosive without licence, must in the absence of proof to the contrary be presumed to be carrying it with the intention of using it when an opportunity arise which would be detrimental to the people at large. Possibly, taking into consideration all those aspects, including the national interest and safety of the fellow citizens, the Legislature in its wisdom has prescribed a minimum mandatory sentence. Once the accused was found guilty for the offence committed under Section 25(1)(a) of the Arms Act, he has necessarily to undergo the minimum mandatory sentence, prescribed under the Statute.”*

In the case of *Hari Kishan v. State (NCT Of Delhi)*<sup>18</sup>, the accused was charged under section 25 of the Arms Act, 1959 for the alleged possession of a live round (8MM KF-91) at the Saket Metro Station. The Delhi High Court while interpreting the word ‘possession’ under the Arms

---

<sup>17</sup> 2012 (8) SCC 676.

<sup>18</sup> AIRONLINE 2019 DEL 814.

Act noted that ‘Conscious possession’ is a core ingredient to establish guilt for an offense punishable under Section 25 of the Arms Act, 1959. The Court observed: “*there is not a whisper of an averment in the 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, the FIR against the petitioner is hereby quashed and thus the proceedings emanating therefrom against the petitioner are also quashed.*”

#### Toy Guns/Air Gun

In the case of ***Maroju Vaikunta Balaji v. State of A.P.***<sup>19</sup>, the accused posed with an air gun in a cinema theater and he was charged with Sections 290 and 506(2) of the Indian Penal Code (IPC) and Section 25 of the Arms Act. The Andhra Pradesh High Court while granting bail to accused person noted that the pistol used was an air gun, which is a toy gun and cannot be said to be a ‘firearm’ for the purposes of Section 25 of the Arms Act, 1959. Therefore, the provisions of the Arms Act, 1959 are *prima facie* not attracted.

#### Celebratory Fire

‘Celebratory firing’ means firing of shots into the air on occasion of any celebration. The practice is carried on in society because a gun is considered a symbol of power and class in society. This practice is inherently dangerous as there are instances that show that this firing had caused injuries to the people attending the wedding also led to the death of some people.

In the case of ***Shyam Sunder Kaushal v. the Union of India***<sup>20</sup>, a public interest litigation was filed by Shyam Sunder Kaushal with the objective of seeking legal directives aimed at regulating celebratory firings. The Delhi High Court identified a significant concern related to the prevalent practice of utilizing both licensed and unlicensed firearms in public gatherings, religious sites, wedding celebrations, and other events to discharge ammunition as a form of expressing happiness. The petitioner contended that this practice jeopardizes the fundamental right to life, as enshrined in Article 21 of the Constitution of India, for other individuals (Numerous writ petitions highlighted specific incidents of such firing leading to fatalities and injuries). The plea entailed a request for the Union of India, as the respondent, to establish strict policies, regulations, and guidelines to address and prevent the objectionable practice of celebratory firing. Moreover, it was urged to implement a robust system to prevent the misuse of firearms licenses, with provisions for penalties and license revocation in cases of misuse. Consequently, the Delhi High Court issued directives instructing the government to formulate

---

<sup>19</sup> Criminal Petition No. 2550 and 2561 of 2022.

<sup>20</sup> W.P.(C) 4057/2016 decided on 13 September, 2017.

and publicize an effective policy on this matter within a time frame of three months.

## **V. CONCLUSION**

The Arms Act of 1959 remains a critical component of India's legal framework for regulating firearms. The Arms Act of 1959 is widely regarded as a legislative measure focused on security, as it is designed to establish and uphold specific constraints and regulations pertaining to firearms and guns. This is crucial in upholding public order, safeguarding the rights of individuals, and mitigating the risk of firearms falling into the possession of unauthorized individuals. However, the challenges of enforcement and the need for public safety necessitate ongoing reforms. Although, the existing legislation quite stringent in terms of regulatory and prohibitory provisions pertaining to arms and ammunitions, the enforcement aspect of the same is inadequately monitored. There is a deficiency in enforcement when unauthorized manufacturers are engaged in criminal activities whereas, it is imperative to pinpoint the illicit producers, as a majority of criminal incidents involve domestically crafted weapons. Promoting compliance and enforcement of the legislation necessitates an enhanced level of implementation and awareness. It is regrettable that over the years following the enactment of the Arms Act, 1959 by the Parliament, successive governments/authorities have endeavored to undermine the very objectives for which this legislation was implemented. Instead of fulfilling its intended purpose of facilitating legal gun ownership for law-abiding citizens while curbing access for criminals and terrorists, the government has utilized it akin to the practices of our former colonial rulers, primarily to restrict the public's access to firearms and to reward their own supporters. The initial aim of replacing the outdated colonial law was undoubtedly geared towards simplifying the legal process for ordinary citizens to possess firearms, all the while deterring illicit arms acquisition by criminals and anti-social elements; however, the contrary outcome has transpired.

Furthermore, the discussion of significant legal cases illustrates how courts have navigated the intricacies of the Arms Act, reinforcing the principle that the prosecution must provide compelling evidence to support its claims. The mandatory minimum sentences prescribed for violations reflect the legislature's commitment to addressing the serious issue of illegal arms possession, which poses a threat to public safety and national security. Therefore, it is suggested that thorough oversight is essential to monitor the possession and use of firearms in accordance with their respective categories and the regulations outlined in Rules 2016 and the legislation. A balanced approach that considers both individual rights and the collective need for security, ensuring that arms legislation effectively addresses the complexities of modern

society is required to adopted by the government and concerned authorities.

\*\*\*\*\*



## VI. REFERENCES

### (A) Books

- Ajay Pratap singh, *The Arms Act In India: A Study In Criminological Perspective* (2014).
- Justice P.S. Narayana, *The Arms Act, 1959 and The Arms Rules, 2016* (2022).
- P.L. Malik, *Commentary on Law of Arms and Explosives* (4<sup>th</sup> ed. 2023)

### (B) Articles

- Abhishek Gurawa, *Conscious & Unconscious Possession of Ammunition and its Consequences under The Arms Act, 1959*, Vol.3 Issue 3 International Journal of Legal Science and Innovation (2020).
- Bikash Sen Deka, *The Arms Act, 1959: A Legal Analysis and Comparative Study with USA*, Vol. 1 Annual International Journal on Analysis of Contemporary Legal Affairs (2021).
- Madan G Singh, *Owning of Arms in India and History of the Indian Arms Act 1959*, Knowji Inc. available at: <https://general-law.knoji.com/owning-of-arms-in-india-andhistory-of-the-indian-arms-act-1959/>.
- Varshita Girishi and Priyank Jagawanshi, *An Analysis of Indian Arms Laws with respect to Licensing Procedures*, Vol. 4 Issue 5 International Journal of Law Management & Humanities (2021).
- Yashvi Goyal, *Laws Relating to Arms and Ammunitions in USA & India: Responsibility of a Country or a Citizen*, Vol. 6 Issue 4 International Journal of Law Management & Humanities (2023).

\*\*\*\*\*