

THE NEED FOR THE RIGHT TO POSSESS AND FIRE FIREARMS IN INDIA

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***Abstract---** The right to possess and bear firearms is recognised extent of an individual right to self defence in dire situations where such action is deemed necessary for the survival of the person inflicted. Legislations around the world have regulated and maintained the procedure of issue of license to possess and the permits to carry such ranged weapon with the individual. The issue with the right to possess and firearms is with the lack of proper framework backing up the process of issue of license and permits. Such as right is given to the people only for it to be used in times of personal defence. People have been using such weapons for their personal vendetta, using it to commit homicide, armed robbery, armed mugging and been shootouts in public, putting the general public in the threat of their lives. In several nations people with terrorism agenda have been using weapons to masscare people while putting forth their ideas of public cleansing and even in abetment of one's suicide. For such reasons, anti-gun help groups have been pushing back the right to possess such firearm. For the effective regulation of gun violence control and effective gun usage. India has stricter gun control laws in comparison with several other nations, an ordinary citizen is prohibited from carrying a concealed weapon. Such a legislation perhaps projects the societal view on possession of gun as a fundamental need as weapon isn't the one that ends up killing another, its the person behind the trigger*

***Keywords :** Firearm, Possession, Self Defence, Gun Control, Gun Violence.*

I. INTRODUCTION

The right to possess and fire firearms is a recognised individual's right to possess weapons for one's own defence. It the magnitude of such individual's right is protected on either on statutory base or in some instances, constitutional base. The person's right to possess firearms is a mere natural right of resistance and an act of self preservation. ³ However such a right is subjected to intense allowance and recognition by law of the land. The said right of an individual is permitted for personal use, that is to protect one at times of danger, a time of circumstance that is not explicitly prohibited by the law of the land. That being said, the said right isn't absolute. The person's right to possess firearms can be taken away from the person. Fugitives, people are recognised as imminent danger to the society, people who had involuntarily committed delusional and psychological acts are deprived of their right to possess one. At times, appropriate

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courts have issued order of non-possession to those who have a restraining order or had harassed, stalked or threatened another individual.

4 A firearm in such an instance, refers to ranged weapon designed in a way to allow the pneumatic discharge of solid projectiles. A ranged weapon may in some instances, fire liquid projectiles in water cannons, charged projectiles in plasma gun or even free-flying bullets as bullets and artillery shells. The ranged weapon, the gun is designed in a manner that high gas pressure gun barrels launches the projectile with high velocity through the gun barrel that in all possibility pierce the human body or another object. The travelling velocity is high enough to pierce and pass through the other side of the body. The type of the ranged weapon also determines the range of the projectile travelling and level of impact of the projectile on launch. Some would include, submachine gun, rifle, shotgun, machine gun, handgun and hunting rifles. Countries that recognise the individual's right to possess and fire firearms permit the possession of semi-automatic rifles, handguns and semi-automatic shotguns. Possession of automatic firearm is prohibited for reasons of it being way too dangerous.

5 In most of the legislations in almost all of the countries around the world, a person who is at least the age of 18 years of age can acquire and fire firearms, however firearms such as handguns and semi-automatic shotguns are sold only to people who are of the age of 21 and above. In some legislations, ranged weapons are also classified into the bore of the weapon, that is the diameter of the bullet and the diameter of the barrel hole. The Federal or the Union Firearms License is required to those agencies or businesses who sell firearms. The individual who desires to acquire and possess firearms ought to fulfill the mandatory requirements and apply for a license. Most of the license issued to owners in countries around for an initial period of three years and renewal for subsequent periods of three years. 6 In India, The Arms Act, 1959 classifies firearms into 2 categories namely, Prohibited Bore and the Non Prohibited Bore. Citizens of India who have apprehended grave and imminent threat to their lives, who have made themselves a target to terrorism by the nature of their occupation can apply for Prohibited Bore firearms and are supplied with a series of specific weapons, other categories are prohibited to civilians.

4 Madhaorao Phalke vs The State Of Madhya Bharat 1961 AIR 298, 1961 SCR (1) 957

5 Kapildeo Singh vs State Of Bihar And Ors. AIR 1987 Pat 122, 1987 (35) BLJR 443

6 Ganesh Chandra Bhatt vs District Magistrate Almora And ... 1993 (1) BLJR 669

7 However there exists a loophole in procedures for issue of license and permit, a permit referring to applicants passing a written test and gun safety classes to obtain a permit to purchase and carry handguns, open and closed concealed carry of firearms. Any Individual can sell firearms from their house, the illegal market or even online and as such any individual can purchase firearms without the permits. Such ambiguity goes to show how a crooked the legislations about possession of firearms and the resulting increase in gun violence in countries where the issue of firearms are not regulated and background checks aren't made against those who purchase firearms. People have turned to ranged weapons when knives, and other potentially violent and lethal instruments are available. An individual cares more about their own well being more than another person's life. The person's right to private defence is executed to the extent of taking away the life of the perpetrator and such action of the victim is permissible under the penal law of every nation which recognises the need for the right to possess and bear firearms.

Objectives of the study

The objective of the present paper is

1. To understand the concept of Firearms,
2. To critically analyse the legality the need for the right to possess and fire firearms and
3. To examine the procedure for production and issue of license to possess and fire firearm in India.

Review of Literature

One of the many nations which have recognised the need for the right to possess and bear firearms is United States Of America ("Possession of a Firearm" 1948). With every citizens claiming their right to possess firearms, production of firearms has increased one thousand times when compared to the sales in the 19th century when need for the possession of gun propaganda as a fundamental right of a citizen around the world (Geneva and Small Arms Survey Geneva, n.d.). Several nations have justified their statutory right to bear firearms as the presence of guns would in all possibility crease the potential rate of a violent interaction ending in violent outcome (Monturo 2019). Since most of the people in the possession of such weapon wouldn't always carry it with them everywhere they travel, they would always be in close proximity of such weapons, either in the dashboard of their vehicles or in secured closet in their house (Stroebe

7 Hridaya Narain Tiwari vs State Of U.P. Thru Secy. Deptt Of ... (2010) 7122

2013). Thus it eliminates the question of it being misused by a minor or a person who isn't authorized or competent to handle such weapons (Manganelli, Weyermann, and Gassner 2019).

For a nation to oppose the recognition of the right to possess firearms, it ought to overlook the individual inherent right to protect themselves with a measure which would in all probability protect their lives (Furlong, Flam, and Smith 1996). The most popularly rised issue of the gun control activists is that of the murder of the perpetrator can always be prevented and such drastic measures isn't deemed necessary (McNiell, Weaver, and Hall 2007). The main purpose of a firearm in such issue is always overlooked as firing the firearm would immediately help in the assistance of protection of one's life (Zeoli et al. 2019). In the question of whose life is valued, the individual whose life is in question would always be the one that is given importance to than the person who is putting the other's life at stake (Siegel et al. 2019). To value the life of the perpetrator over the life of the actual victim is a fallacy on its own. For a legislation to value one life over the other in times of danger isn't a sound one and such legislation aims to solve none (Khan 2016). It not a privilege to protect themselves at times of conflict

Gun violence is often perceived through shootouts in public areas and sometimes in walls of a private establishment (Logan, Ertl, and Bossarte 2019). It's often the lack of security measures taken and effectively monitored. Public areas of gathering do not monitor suspicious activity and behaviour of an individual, such areas do not have radar scanners to scan the possession of an armed firearm (Valenstein et al. 2019). Such incompetence of the state is the primary reason why gun violence hasn't been controlled. On the other hand, elimination of gun violence isn't completely possible since, to reduce such gun related violence is only possible if there is a stricter scrutiny and flawless regulation (Wells, Katz, and Kim 2010). However such a measure by the state is every much improbable considering how firearms always find their way into the local market and into the hands of the street thugs. Regulation regarding gun control cannot be upheld no matter how much scrutiny is taken by the state (Wintemute 2010).

The issue of issue of gun correlating the increasing violence is often answered with the development of preventive programs, gun control supporters and complex system of verification needed for the possession of such weapons (Kim 2018). Violence related to armed weapon are in areas where the society's view on self defence is that of opening fire rather than evading the area (Hernandez-Meier et al. 2019). Such areas are those which the law enforcement agencies have very less impact and where the streets have more knowledge of ins and outs of the law than the

police themselves (Furlong, Flam, and Smith 1996). Most of the accused in public shootouts and school shootings are those who aren't mentally sane person. The accused are always those who have been persecuted by the society for their odd behaviour and their anti social attitude (Nichols 2019). The state has to question itself how such a lunatic of a person came into the possession of armed firearm. The weapon used in such shootouts are always semi automatic rifles, however such rifles have been banned by all legislations since the 19th century (India and Srivastava 1963). Semi automatic rifles are issued only for police enforcement agencies since military officials are always issued automatic rifles to help the accuracy and range of the projective during conflicts. Thus there is an apparent lack of scrutinized security for the armory of the enforcement agencies and the armed production dealers (Barber et al. 2019). For a nation to progress further in a citizen's right to self defence with firearms, it ought to recognize and understand no individual values another's life over their own and defending one's own self in close proximity and in their private house is a recognized right in every constitution all around the world (Kohli and Aggarwal 2006).

Materials and Methods

The present study is based on primary data collected by the researcher and the secondary data collected from books, journals and online sources. The present study used simple random sampling method for selection of samples because the population is too high. A total number of 1505 sample respondents in the age group of 18-60 years were selected randomly from Chennai, one of the four metropolitan cities in India. The study used percentage, Pearson Chi-Square test and frequency for meaningful analysis of the results of the study.

Discussion

Table 1

Null Hypothesis H0: People in the 15-30 years age group have not felt the need to possess firearms.

Alternate Hypothesis H1: People in the 15-30 years age group have felt the need to possess firearms.

Crosstab

		Have you ever felt the need to possess a firearm		Total
		Yes	No	
Age	15-30	226	267	493
	31-45	170	366	536
	46-60	92	179	271
	Above 60	47	31	78
Total		535	843	1378

Interpretation:

In the cross tab between age of the respondent and the question of whether one has ever felt the need to possess firearms among 15-30 years age group, 226 of them said yes, 267 of them said no. Among 31-45 years age group, 170 of them said yes, 366 of them said no. Among 46-60 years age group, 92 of them said yes, 179 of them said no and among 60 years age and above, 47 of them said yes, 31 of them said no.

Table 2

Chi-Square Tests

	Value	df	Asymptotic Significance (2-sided)
Pearson Chi-Square	39.421 ^a	3	.000
Likelihood Ratio	39.084	3	.000
Linear-by-Linear Association	.810	1	.368
N of Valid Cases	1378		

Interpretation:

In the crosstab between age of the respondent and the question of whether one has ever felt the need to possess firearms, the Pearson Chi-Square value is 0.000, $P < 0.05$. Thus the null hypothesis is rejected and the alternate hypothesis is accepted.

Table 3

Null Hypothesis H0: People in the 15-30 years believe that right to possess firearms results in increased gun violence.

Alternate Hypothesis H1: People in the 15-30 years do not believe that right to possess firearms results in increased gun violence.

Crosstab

		Do you agree that the right to possess firearms results in increased gun violence					
		Strongly Disagree	Disagree	Neutral	Agree	Strongly agree	Total
Age	15-30	98	159	145	61	30	493
	31-45	87	185	209	43	12	536
	46-60	41	66	74	47	43	271
	Above 60	19	38	18	1	2	78
Total		245	448	446	152	87	1378

Interpretation:

In the cross tab between age of the respondent and the question of whether one feels that right to possess firearms results in increased gun violence among 15-30 years age group, 98 of them strongly disagreed, 159 of them disagreed, 145 of them were neutral about it, 61 of them agreed and 30 of them strongly agreed. Among 31-45 years age group, 87 of them strongly disagreed, 185 of them disagreed, 209 of them were neutral about it, 43 of them agreed and 12 of them strongly agreed. Among 46-60 years age group, 41 of them strongly disagreed, 66 of them disagreed, 74 of them were neutral about it, 47 of them agreed and 43 of them strongly agreed and among 60 years age and above, 19 of them strongly disagreed, 38 of them disagreed, 18 of them were neutral about it, 1 of them agreed and 2 of them strongly disagreed.

Table 4

Chi-Square Tests

	Value	df	Asymptotic Significance (2-sided)
Pearson Chi-Square	107.022 ^a	12	.000
Likelihood Ratio	103.136	12	.000
Linear-by-Linear Association	1.762	1	.184
N of Valid Cases	1378		

In the crosstab between age of the respondent and the question of whether one feels that right to possess firearms results in increased gun violence, the Pearson Chi-Square value is 0.000, $P < 0.05$. Thus the null hypothesis is rejected and the alternate hypothesis is accepted.

Table 5

Null Hypothesis H0: Undergraduates have not ever felt the need to possess a firearm.

Alternate Hypothesis H1: Undergraduates have ever felt the need to possess a firearm.

Crosstab

Educational Qualification.		Have you ever felt the need to possess a firearm		Total
		Yes	No	
	HSC	53	104	157
	U.G	227	272	499
	P.G	109	224	333
	Professional Degree	95	105	200
	Diploma	32	82	114
	Ph.D	19	56	75
Total		535	843	1378

Interpretation:

In the cross tab between educational qualification of the respondent and the question of whether one has ever felt the need to possess firearms among High School passouts, 53 of them said yes and 104 of them said no. Among Undergraduates, 227 of them said yes and 272 of them said no. Among Postgraduates, 109 of them said yes and 224 of them said no. Among Professional Degree, 95 of them said yes and 105 of them said no. Among Diploma Holders, 32 of them said yes and 82 of them said no and among Ph.D Scholars, 19 of them said yes and 56 of them said no.

Table 6

	Value	df	Asymptotic Significance (2-sided)
Pearson Chi-Square	33.873 ^a	5	.000
Likelihood Ratio	34.323	5	.000
Linear-by-Linear Association	5.195	1	.023
N of Valid Cases	1378		

In the crosstab between age of the respondent and the question of whether one has ever felt the need to possess firearms, the Pearson Chi-Square value is 0.000, $P < 0.05$. Thus the null hypothesis is rejected and the alternate hypothesis is accepted.

Table 7

Null Hypothesis H0: Undergraduates agree that right to possess firearms results in increased gun violence.

Alternate Hypothesis H1: Undergraduates do not agree that the right to possess firearms results in increased gun violence.

Crosstab

Do you agree that the right to possess firearms | Total

		results in increased gun violence						
		Strongly Disagree	Disagree	Neutral	Agree	Strongly agree		
Educational Qualification	HSC	83	16	24	33	1	157	
	U.G	71	211	156	35	26	499	
	P.G	49	110	144	26	4	333	
	Professional Degree	20	70	79	30	1	200	
	Diploma	14	31	23	18	28	114	
	Ph.D	8	10	20	10	27	75	
Total		245	448	446	152	87	1378	

Interpretation:

In the cross tab between educational qualification of the respondent and the question of whether one feels that right to possess firearms results in increased gun violence among High School Passouts, 83 of them strongly disagreed, 16 of them disagreed, 24 of them were neutral about it, 33 of them agreed and 1 of them strongly agreed. Among Undergraduates, 71 of them strongly disagreed, 211 of them disagreed, 156 of them were neutral about it, 35 of them agreed and 26 of them strongly agreed. Among Postgraduates, 49 of them strongly disagreed, 110 of them disagreed, 144 of them were neutral about it, 26 of them agreed and 4 of them strongly agreed. Among Professional Degree Holders, 20 of them strongly disagreed, 70 of them disagreed, 79 of them were neutral about it, 30 of them agreed and 1 of them strongly agreed. Among Diploma Holders, 14 of them strongly disagreed, 31 of them disagreed, 23 of them were neutral about it, 18 of them agreed and 28 of them strongly agreed. Among Ph.D Scholars, 8 of them strongly disagreed, 10 of them disagreed, 20 of them were neutral about it, 10 of them agreed and 27 of them strongly agreed.

Table 8

	Value	df	Asymptotic Significance (2-sided)
Pearson Chi-Square	437.611 ^a	20	.000
Likelihood Ratio	351.703	20	.000
Linear-by-Linear Association	104.961	1	.000
N of Valid Cases	1378		

In the crosstab between age of the respondent and the question of whether whether one feels that right to possess firearms results in increased gun violence, the Pearson Chi-Square value is 0.000, $P < 0.05$. Thus the null hypothesis is rejected and the alternate hypothesis is accepted.

Conclusion

The need for a right to possess a firearm comes with a great amount of responsibility. It ought to be considered as a right which comes with a privilege to own a weapon which would in any

circumstances change the evens in one's favor. Much like every other countries which have legalised the possession and use of a firearm in dire situations, India too in the event of changing its conservative and orthodox views on firearms, ought to bring about a huge deal of changes in regard with state owned production system of firearms for military, law enforcement agencies, paramilitary and even individuals, state mandatory requirements for possession and ownership of firearms policies of gun control and even procedures for the issue of firearm. Such measures in its best run course would regulate the issue and possession of firearm and curb the possibility of gun violence in India. One has to know its not the firearm that ends up hurting another and killing them, it's the person behind it, the one pulling the trigger. Thus in events of gun violence prevailing after the legalisation of possession of firearm, one shouldn't quickly jump the bandwagon and blame the firearm, rather the person who is responsible for the incident.

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