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# Gun Control Policy in India: Is Strict Legislation Effective in Bridling Violence and Crime?

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## ABSTRACT

*The Parliament passed new amendments to the Arms Act of 1959 reducing the number of guns that one person can own, these developments in gun control law in India raise the question whether stricter gun control policy is the way to curb crimes and violence in our country and if guns ensure self-defence when they are encumbered by strict rules for possession, storage, and transport. Taking examples from different countries with polarized views on the issue of gun control, we try to scrutinize the issues caused by civilian ownership of firearms and the reasons why the same is considered important in some countries. Also, the political and ethical ideologies which cause the polarised opinions on guns in different countries are discussed. The United States of America stands as an extreme example with a vast pro-gun lobby and the highest per capita gun ownership. Taiwan serves as the perfect model where gun control measures are minimal, yet the per capita gun ownership is one of the lowest. Japan and Indonesia serve as contrasting examples with strict gun control measures in place, yet Japan is more successful in enforcing those measures than the Indonesian authorities. From each of these models, India has something to learn and implement in its gun control measures.*

*Keywords – Firearms, Violent crimes, policy, law enforcement, comparative law*

## I. INTRODUCTION

One India is said to have one of the most stringent legal frameworks relating to possession and acquisition of firearms and weapons.<sup>2</sup> In December of 2019 new amendments were passed for the Arms Act of 1959<sup>3</sup> (“Act”) which governs the laws relating to weapons (including firearms) in India. The amendments proposed to limit the number of firearms that

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<sup>2</sup>Rama Lakshmi, “India already had some of the world’s strictest gun laws. Now it’s tightened them.”, Washington Post, (Aug. 07, 2016) [https://www.washingtonpost.com/world/asia\\_pacific/india-had-the-one-of-the-strictest-gun-laws-in-the-world-it-just-got-tighter/2016/08/01/affd9422-51da-11e6-b652-315ae5d4d4dd\\_story.html](https://www.washingtonpost.com/world/asia_pacific/india-had-the-one-of-the-strictest-gun-laws-in-the-world-it-just-got-tighter/2016/08/01/affd9422-51da-11e6-b652-315ae5d4d4dd_story.html)

<sup>3</sup> Arms Act, 1959, No. 54, Acts of Parliament(India), 1959

a person can possess to only one. It also proposed the increase of the punishment for possession of weapons prohibited by Section 7 of the Act from 5-10 years of imprisonment to 7-14 years of imprisonment. The “Prohibited weapons” are defined in Section 2(i) of the Act and include automatic weapons and “weapons of any description designed or adapted for the discharge of any noxious liquid, gas or other such things, 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”. Similarly, the Parliament passed the Arms rules<sup>4</sup> in 2016 which gave new rules and processes for acquisition, possession, and use of firearms. The authority for the issue of licences for such firearms was given to the central government. Many types of apparatus used for recreation or protection from wildlife like paintball guns, air guns, replica guns, or electronic disabling devices now need licences to acquire and possess.

Groups in favour of lenient gun legislation resist such amendments. These groups, inspired by the lenient Arms laws in the USA, argue that the right to protect oneself must be backed by the ability to do so. The Second Amendment<sup>5</sup> to the US Constitution recognises that “A well-regulated Militia, being necessary to the security of a Free State, the right of the people to keep and bear Arms, shall not be infringed”. This means that the people have the right to bear arms to keep a check on the Government of a free state. The people may, by their power maintain a well-regulated Militia to enforce the people’s right to protect themselves.<sup>6</sup>

One of the interpretations of the Second Amendment is the implication that when the power of maintaining militia lies with the States, those in power in the Federal Government are controlled from growing hungry for seizing power, exploiting the people, or obstructing the exercise of rights endowed to the people. Another interpretation of the Second Amendment is about how people feel safer when they have the power to protect themselves. These individualists believe that the word “militia” is not limited to State organised militia but also to an individual’s right to bear arms. Given the history of how the USA obtained independence through a revolutionary struggle, it is believed that people guarding their homes are greater warriors than paid mercenaries fighting for their livelihood.<sup>7</sup>

In this issue, there are two aspects that will be addressed. First, a comparison between the legal framework relating to acquisition and possession of firearms in India and that in

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<sup>4</sup> Ministry of Home Affairs, The Arms Rules 2016, G.S.R 701(E)

<sup>5</sup> U.S. Const. Amend. II

<sup>6</sup> <https://www.livescience.com/26485-second-amendment.html>

<sup>7</sup> Chad Brooks, *The Second Amendment and the Right to bear arms*, Livescience.com (Jun. 28, 2017) <https://www.livescience.com/26485-second-amendment.html>

countries like the USA, Taiwan, Japan, and Indonesia. Second is the ethical and moral issue of whether civilian access to firearms is beneficial, acceptable, and safe for society.

A survey by the World Population Review<sup>8</sup> on per capita gun ownership shows that India has about 5.3 gun owners for every 100 people, putting it on the lower end of the spectrum. The USA, however, takes the spot for the highest per capita ownership of guns with about 120-gun owners for every 100 people. This shows how far apart on the spectrum India and the USA are. The USA is also further away from the Falkland Islands which has the second highest per capita gun ownership. The country with the least gun ownership in this list, Taiwan has almost zero civilian firearms with only 10000 civilian firearms for their population of 23 million.

## **II. GUN CONTROL POLICY IN TAIWAN**

Gun control is not very strict in Taiwan and civilians are allowed to acquire shotguns and rifles after passing a background check, the precursor to which is not having any criminal allegations and links to any radical groups. The Controlling Guns, Ammunition, and Knives Act<sup>9</sup> passed by the Chinese Government acts as a uniform legislation for the whole country of Taiwan. The Act requires civilians to acquire a licence to purchase firearms. Rifles and Shotguns can be acquired by those of 18 years of age for hunting and target practice. The Taiwanese have a culture of hunting. Owning a gun is a matter of pride to them. Given their low crime rate, acquiring a gun for self-defence is rare. To buy a handgun and carry it for self-defence, one needs to apply for a Hand licence. These licenses are issued to people of at least 21 years of age who pass tests for mental illness and background checks after a one-week waiting period.

## **III. GUN CONTROL POLICY IN JAPAN**

According to another survey<sup>10</sup>, Japan has the 3<sup>rd</sup> lowest crime rate in the world with only 15.91. What is significant is that Japan ranks 5<sup>th</sup> in the list of countries sorted by per capita gun ownership. Japan has only 0.3 civilian firearms for every 100 people. Taiwan on this list<sup>11</sup> has a crime rate of only 16.22. Japan has a very strict policy about guns and the police only started carrying guns in 1942. Civilians are also not allowed to possess swords or whips and air guns and nail guns require permits. Replica guns that appear real are prohibited. The

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<sup>8</sup> *Gun Ownership by Country 2020*, World Population Review (Apr. 07, 2020), <http://worldpopulationreview.com/countries/gun-ownership-by-country/>

<sup>9</sup> Ministry of Interior, Controlling of Guns, Ammunition and Knives Act, 2017 (China)

<sup>10</sup> *Crime Rate by Country 2020*, World Population Review (Apr. 07, 2020) <https://worldpopulationreview.com/countries/crime-rate-by-country/>

<sup>11</sup> *Id.*

country prohibited civilians from possessing firearms until 1958 when a gun control act<sup>12</sup> was introduced. The Government allows only a few guns for each of purposes of hunting, sports, self-defence, testing and research, and crop protection. One has to apply with the Public Safety Commission of the prefecture where they live. Handguns cannot be owned by civilians except for testing and research. The transfer, loan, and borrowing of guns are also prohibited. The country also has a specified number of guns that can be owned by civilians in the country which, according to a report<sup>13</sup>, has been reducing annually from 830000 in 1980 to 270000 in 2011. The law goes as far as restricting ownership if the spouse of a licensee is said to pose a threat to the life or property of another using the firearm or sword. This shows how strict these gun control measures are.

Gun ownership is a debated area. On the one hand, gun ownership can act as a general deterrent to criminal predation and reducing the risk to owners and non-owners, but widespread gun ownership also adds an increased risk of misuse by gun owners or with stolen or misplaced firearms. However, criminal violence has a positive relation to gun prevalence i.e. high rates of gun ownership increases lethality of violent crime.<sup>14</sup>

Japan and Taiwan are examples of countries with very low gun ownership and crime rates but they are also very different in terms of legislative framework concerning gun control. Taiwan has a lenient framework and a culture of gun ownership in society. Very few people of aboriginal communities can hunt. Citizens are not allowed to hunt due to the dense population and the scarce resources in Taiwan.<sup>15</sup> The evident reasons for fewer gun owners in Taiwan are the low crime rates and effective law enforcement which eliminates the need for guns for self-defence.

Thus, even when the legal framework is lenient the people do not find the need to bear arms. In the case of Japan, arms are very strictly controlled. This coupled with effective law enforcement and low crime rates eliminates the need for possessing arms and also prevents the acquisition of arms which may pose some threat to people. According to a report,<sup>16</sup> Taiwan has the highest proportion of people in high-income groups and the least proportion

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<sup>12</sup> Law Controlling the Possession of Firearms and Swords, 1958 (Japan)

<sup>13</sup> Sayuri Umeda, *Firearms- Control Legislation and Policy: Japan*, Library of Congress, (February, 2013) <https://www.loc.gov/law/help/firearms-control/japan.php#f33>

<sup>14</sup> Philip J. Cook and Jens Ludwig, *The Social Costs of Gun Ownership*, (National Bureau of Economic Research Working Paper no. 10736, 2004) <https://www.nber.org/papers/w10736>

<sup>15</sup> *Why Taiwan is So Safe – A Glimpse at a World Without Guns*, Chineseconnects.com (July 22, 2015) <http://chineseconnects.com/taiwan-gun-laws/>

<sup>16</sup> Ryan Drillsma, *Taiwan contains lowest percentage of citizens living below poverty line in Asia*, Taiwan News (05:35 PM, May 05, 2019) <https://www.taiwannews.com.tw/en/news/3711698>

of people under the poverty line in Asia. This causes the number of poverty-driven crimes to be minimal. This may imply a relationship between the welfare and satisfaction of the population and the crime rates irrespective of the gun control laws.

We can clearly understand how lenient the laws around firearms are in the USA, as compared to these countries. The many reasons for this are related to their history, demographic composition, and their economic model. The USA was formed after a revolutionary war against the British by the local militias. Thus, the mindset of the leaders in the initial years included armed militia as a viable option in the future. Since the country is a republic, people have the Supreme power. The rights bestowed by the Second Amendment of their Constitution allow the people to arm themselves and prepare for an organised militia. Adding to this, the country is also a large producer of firearms. Being a large contributor to their economy, firearms are also consumed by the country on a large scale.

#### **IV. GUN CONTROL POLICY IN THE USA**

The Gun Control Act of 1968<sup>17</sup> is the uniform federal legislation for gun control in the USA. It gives the rules and procedures involved in the acquisition, licensing, sale, import, export, and manufacture of Firearms in the USA. The procedure prescribed is that any dealer or importer must obtain a licence from the Secretary of the Treasury after paying fees for each establishment being licensed according to Section 923. Section 922(b) states the qualifications for the acquisition of firearms from a dealer. It is unlawful for a dealer to sell a firearm to anyone who the dealer knows or has reasonable cause to believe is under the age of 18 or that they are not from the same state as the licensee. It is also unlawful to sell armour piercing bullets or any destructive device, machinegun, short-barrelled shotgun or short-barrelled rifle.

It is unlawful for the dealer to sell any firearm without a declaration stating that the buyer is above 18 years of age and is not prohibited from owning a gun. The information provided is then checked with the National Instant Criminal Background Check System (NICS) per the Brady Law<sup>18</sup>. Any person convicted of a felony, misdemeanour, or declared “mentally defective” by the court will not pass the background check. Under Section 922(d) of the act, it is unlawful for a dealer to sell any firearms to a person who he has reasonable cause to believe, is under indictment, conviction, fugitive from justice, a user of or addicted to any controlled substance under the Controlled Substances Act<sup>19</sup>, is mentally defective, is an alien

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<sup>17</sup> The Gun Control Act 18 U.S.C §921

<sup>18</sup> Brady Handgun Violence Prevention Act, 18 U.S.C §921-922(1994)

<sup>19</sup> Controlled Substances Act, 21 U.S.C §801(1971)

illegally present in the USA or has a non-immigrant visa or has been discharged from the armed forces under dishonourable conditions. Marijuana is one such drug mentioned in the Controlled Substances Act but has since been legalised for recreational and medicinal in many states of the USA. Marijuana users are still not allowed to own firearms under the Brady Law.

Handguns however have a threat in society. They are small, lightweight, and concealable. This poses an immense threat to any law enforcement officer who is investigating a person in possession of a handgun. Thus, handguns can only be purchased by people of 21 years of age and require concealed carry permits in most states. However, rifles require no permits in 48 of the states, while the person carrying a rifle or shotgun in New Jersey and Massachusetts is required to carry an ID.

However, after many events of public mass shootings and the assassination of President John F. Kennedy, lobbyists for gun control have petitioned for stricter rules. Twenty-five of the States allow people to purchase guns without the need for a licence. The others require owners to have licences to carry the firearms. A lot of people own guns just for recreation, there is no limit on the ammunition that can be stored by a person. Gun shooting ranges are common and easy to access. However, 73% of homicides in the USA are committed with registered and licensed firearms.<sup>20</sup> The country has about 54000 licensed firearm dealers.<sup>21</sup> The nation's largest retailer of firearms is Walmart, a supermarket corporation. A handgun costs \$200 on an average which is very cheap compared to India, where a licensed revolver may cost upwards of Rs. 70,000. Considering that the USA has a higher per capita income than India<sup>22</sup>, it is easy to say that guns are very accessible to Americans.

California is one of the only states in the USA that requires a permit to own a rifle or shotgun, applicants have to pass a written test and take gun safety classes to obtain the permit. A person may only acquire firearms at a licensed California Arms Dealership and any private party transfers must be made in presence of a licensed dealer. This ensures a proper record of all firearms in the State and helps law enforcement trace weapons. It is also required by Section 26845 of the California Penal Code<sup>23</sup> to attach a proof of address to purchase a handgun. To store the firearms, the State of California requires owners to store them with a

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<sup>20</sup> *America's gun culture in charts*, BBC (Aug. 05, 2019), <https://www.bbc.com/news/world-us-canada-41488081>

<sup>21</sup> Gregory Korte, *Buying a gun legally in U.S. isn't difficult*, USA Today (4:18 PM. Jun. 20, 2015), <https://www.usatoday.com/story/news/nation/2015/06/20/how-to-legally-buy-a-gun-in-the-united-states/29034879/>

<sup>22</sup> GDP Per Capita, World Bank, (2020) <https://data.worldbank.org/indicator/NY.GDP.PCAP.CD>

<sup>23</sup> California Penal Code, Cal. Civ. Code §26845

Firearm Safety Device which passes safety checks and is listed on the Department of Justice (DOJ) roster of approved firearm safety devices. Also, the owners are required to store firearms in a lockbox approved by the DOJ and listed on their roster. The DOJ also has a roster of approved handguns that have passed safety tests by the authorities and only these handguns are allowed to be sold in the State of California. These gun control measures are possible in California because the State Constitution has no provision for the right to bear arms as the second amendment gives. The Supreme Court of the USA however decided that the Second Amendment applies to the whole union of states after the cases of *Heller*<sup>24</sup> and *McDonald*<sup>25</sup>.

In the case of *District of Columbia v. Heller*, a ban by the district on handguns and requirement to store guns with trigger locks or in a disassembled state was challenged on the ground that the law defeats the purpose of owning guns for self-defence at home. Because the District of Columbia was not included in any state as it had the status of a Federal Enclave, the issue of whether the Second Amendment's rights are included in the Fourteenth Amendment's Due Process Clause was not addressed. The clause in the Fourteenth Amendment of the USA Constitution states that "...Nor shall any State deprive any person of life, liberty, or property, without due process of law". In the case of *McDonald v. State of Chicago*, a Chicago ordinance was upheld by the Court of Appeals of the Seventh Circuit allowing a ban of handguns and restrictions on rifles and shotguns. The Illinois State Rifle Association and The Second Amendment Foundation sponsored the litigation on behalf of several Chicago residents including Otis McDonald. The case was filed by Alan Gura who successfully argued the *Heller* case and Chicago attorney David G. Sigale. The Supreme Court reversed the Seventh Circuit Courts' decision and held that the Second Amendment rights are protected under the provisions of the Fourteenth Amendment against the State. Thus the constitutionality of California laws is under question. Many states like California have banned civilian ownership of automatic assault weapons.

Thus, the USA having the highest gun ownership rate in the world has also developed a gun control lobby who wants to reduce the ownership rates owing to the frequency of violent crime in the country. However, it is not a consistent fact that firearm prevalence causes violent crime.<sup>26</sup> The argument in favour of gun prevalence is that firearm owners can use guns to protect themselves and thereby reducing crime. India has a crime rate similar to that

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<sup>24</sup> *District of Columbia v. Heller*, 554 U.S. 570 (2008)

<sup>25</sup> *McDonald v. Chicago*, 561 U.S. 742 (2010)

<sup>26</sup> Matthew D. Moore & CariAnn M. Bergner, *Relationship between Firearm ownership and Violent Crime*, Volume 3, Number 1 (Spring), Justice P.J. 17 (2016)

of USA. India's strict firearm policy however is not supplemented by strong law enforcement. The police have "failed to evolve from the ruler supportive, repressive forces they were designed to be under Britain's colonial rule..."<sup>27</sup> The system depends on abuse and threats to carry out criminal investigation instead of policing through public consent and participation. Thus, the country suffers not only from high rates of crime but also from poor law enforcement which is unable to bridle crime.

## V. GUN CONTROL POLICY IN INDIA

In India, one must go through a long extensive process just to obtain a handgun. The Act gives the classification of weapons, procedures to obtain and renew licences, a deposit of weapons, acquisition from dealers, and application for a licence for dealers and manufacturers and import and export rules. The Arms Rules of 1962<sup>28</sup> were modified by the Arms Rules passed in 2016. These rules contain the procedures and rules under the Arms Act in a more clear and specific sense. The procedure described allows civilians to own firearms for 3 purposes: Self-defence, Crop Protection, and Sport. However, since these rules classify air guns and paintball guns as permissible arms under category 3 of Schedule 1<sup>29</sup>, even these need a license to own. Thus, sportspersons participating in air rifle or pistol events must be licence holders. Thus, sports licences extend only to air guns, paintball guns, or shotguns [defined in section 2(uu)<sup>30</sup>] used for skeet shooting. Crop protection licences can be acquired by agricultural or cattle farmers to protect crops and cattle from the threat of wildlife. People with any threat to their life, lives of their family, or to their property may apply for a licence on the ground of self-defence.

The procedure for acquisition is lengthy. The 2016 Arms Rules<sup>31</sup> authorize the Central Government to give licence for acquisition and possession. The Ministry of Home Affairs is the Licensing Authority in these matters. Application for a licence requires filing Form III or V of the Arms Rules 2016 for sporting purposes, Form IV for crop protection purposes and Form II for self-defence purposes. The forms require the applicants to submit personal details, tax records, provide certificates of good mental health and declare the ability to store the firearm outside the reach of others. The district magistrate holds a record of all the licensed firearms and their owners in their jurisdiction. The Licensing Authority will conduct

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<sup>27</sup> *Broken System Dysfunction, Abuse and Impunity in the Indian Police*, HRW, (Aug. 04, 2009) <https://www.hrw.org/report/2009/08/04/broken-system/dysfunction-abuse-and-impunity-indian-police>

<sup>28</sup> Ministry of Home Affairs, The Arms Rules 1962, G.S.R 947

<sup>29</sup> *Id.*, at 3

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

a check-up of background and details furnished before issuing a licence. The applicants have to take a training course for the proper use, storage, and transport of the firearms. This process may take up to 2 months to complete and then the licence issued has to be attached to purchase a gun.

However, the Arms Rules of 2016 have taken a few steps towards the easy issue of licences. The previous requirement to prove an “imminent” threat to one’s life for a licence for self-defence has been replaced with the need to prove an “anticipated” threat. And any official of the Licensing Authority should give reasons when rejecting an application for a licence in a step towards a transparent system.

Schedule I of the Arms Rules of 2016<sup>32</sup> give a classification of weapons and civilians are only allowed to acquire and possess arms of Category III which are permissible weapons and Category IV which are historical. Category I contains semi-automatic weapons and Category II contains machinery for making firearms which are prohibited for civilian ownership. Category III has further sub-classifications and includes handguns which are not semi-automatic (self-loading), Breech-loading rifles, .22 bore Rimfire rifles, Breech-loading smoothbore shotguns, muzzle-loading guns, Air rifles and airguns exceeding 20 joules energy, replica firearms, electronic disabling devices (taser), paintball guns, blank-firing firearms, and any accessories for firearms that could diminish noise or flash caused by firing.

These laws were criticised for including electronic disabling devices, air guns and paintball guns under the same category as shotguns and handguns. Air guns are widely used for sport and the pellets do not cause any bodily injury. Paintball guns are used for recreation and propel balls containing paint. These balls are half an inch wide and do not cause any harm to humans. Electronic disabling devices had become a common self-defence tool for women especially. The device fires a pin which on impact stuns the person with electricity. This disables a person for a while allowing the user to escape. Women using these devices now must get licences and show reasons for possession.

Looking at India’s history will tell us why our firearms policy is so tightly knit. India struggled for its independence from British rule like the USA, but the difference was that India a relatively peaceful approach. This put India in a very conservative position. Peaceful resolution of disputes is preferred over violence. After the sepoy mutiny of 1857, Lord Lytton was appointed Viceroy and he brought out the Arms Act, 1878<sup>33</sup> which restricted any Indian from owning firearms without a licence issued by the British Authorities. This was the first

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<sup>32</sup> *Id.*, at 3

<sup>33</sup> The Arms Act, 1878, No. XI, India Acts, 1878(England)

gun control measure in India, and it was maintained until India became independent in 1947. A new amendment bill proposed in December 2019 suggests a greater penalty for unlicensed weapons and the restriction of the number of weapons that can be owned under these licences to one per person.

India has large illegal gun making industries and gun smuggling rings. Incessant gun smuggling along the borders of Myanmar and Bangladesh by Maoists, terror outfits and other criminals created an inflow of illegal weapons in the country<sup>34</sup>. In 2018, 74,877 firearms were seized in India out of which 3,742 were licensed/factory-made, the rest were country-made or unlicensed.<sup>35</sup> According to the National Crime Records Bureau<sup>36</sup>, in 2016, out of 3775 cases of murders with firearms only 322 cases were committed using licensed firearms. The government's strict gun control policy seems reasonable by itself, but when seen along with data of crime and violence it shows how the strict gun control policy is fuelling a marketplace for country made and illegal guns, thus suggesting an inability of the same authority entrusted with the security in performing their duties effectively. It would be seen as a failure of the government to relieve gun control and let the people protect themselves. The Government's inability to stop illegal firearms will in turn increase the need for a law-abiding citizen to seek a gun for self-defence.

However, guns are violent destructive tools giving the power to take lives or inflict grievous damage to a person with the pull of a trigger. Guns being easily available to most people not only increase the risk of more violence but also create an atmosphere of fear and unrest. When in our country, only 322 out of 3775 cases of murder with guns are done with registered firearms, instead of increasing the gun control measures the government should focus on curbing smuggling and production of the country-made guns. In the case of *K. M. Nanavati v. The State of Maharashtra*<sup>37</sup>, the accused was an officer in the Indian Navy who fired from his revolver in provocation. It can be observed that however well trained the person in possession of the gun is, there is always a threat to those around them. Thus to maintain peace in society, the government must have the right to stop people from acquiring and using guns. And with this right, the government also has the responsibility to protect the citizens from unlawful elements, which are the very reason why self-defence is being sought. Should the government fail to provide such security; people would move for lenient gun

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<sup>34</sup> Anashwara Ashok, *Arms Smuggling- A Threat to National Security*, CLAWS, (April 6, 2020)

<https://www.claws.in/arms-smuggling-a-threat-to-national-security/>

<sup>35</sup> Crime in India 2018, National Crime Records Bureau Volume I, (2018) <http://ncrb.gov.in/crime-india-2018>

<sup>36</sup> Table 2A.4, Victims murdered by use of firearms-2016, National Crime Records Bureau (2017) [https://ncrb.gov.in/sites/default/files/crime\\_in\\_india\\_table\\_additional\\_table\\_chapter\\_reports/Table%20A.4.pdf](https://ncrb.gov.in/sites/default/files/crime_in_india_table_additional_table_chapter_reports/Table%20A.4.pdf)

<sup>37</sup> *K. M. Nanavati v. State of Maharashtra*, 1962 AIR 605, 1962 SCR Supl. (1) 567 (India)

policy to protect themselves giving rise to a situation like in the USA where 42% of the households have a gun.

The use of guns for hunting and crop protection is very minimal and only a small demographic group requires guns for such use and these guns are usually slow-firing, heavy, and too big to conceal. Air Guns are used for sports fire pellets which can hardly cause any harm. Paintball guns used for recreation fire synthetic balls filled with the natural colour which explode on impact and release the paint. Such guns are propelled by gas and the large balls are unlikely to cause harm. Thus, such instruments being classified as firearms and weapons is not rational and must be easily available to promote sport and recreation in the country. It should not be required to obtain permits and licences even for such instruments of recreation and sport as they hardly pose any threat to society.

There is always a risk of gun violence when guns are prevalent. Guns may be used as a deterrent to crime but at the same time are used for violent crime. A comparison drawn between firearms and nuclear weapons can explain this at best. Nations with nuclear weapons are all geared up to retaliate at a State that fires a nuclear weapon. However, no State fires in fear of retaliation and thus mutual assured destruction holds the States from using their nuclear weapons but are at the same time prepared to retaliate. But it is argued that this analogy is not accurate<sup>38</sup>, citing that the Proliferation of firearms in America during 1780s helped fight off the British and the availability of firearms in Afghanistan helped resist the Soviet invasion in 1979. Research shows that gun owners feel safe while carrying a firearm and this may have connections to many psychological issues like past victimization.<sup>39</sup> On the other hand Gun prevalence may also mean the fear of victimization is increased in the society and that ownership doesn't mitigate the fear of victimization but increases the need for a person to get firearms.

## VI. GUN CONTROL POLICY IN INDONESIA

Examples of Taiwanese and Japanese systems form a deduction in our minds that gun ownership and crime rates have a direct relation. But the example of Indonesia will change this view. Indonesia has one of the least per capita gun ownership with only 82000 guns in a population of 273 million whereas its crime rate is more than India and very close to that of

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<sup>38</sup> David B. Kopel, *Peril or Protection: The Risks and Benefits of Handgun Prohibition*, Volume 12 S.L.U.P.L.R (1993)

<sup>39</sup> Joseph M. Pierre, *The psychology of guns: risk, fear and motivated reasoning*. *Palgrave Commun* 5, 159 (2019) <https://doi.org/10.1057/s41599-019-0373-z>

the United States. India has a crime rate of 42.3 whereas Indonesia has 46.2 and the US, 46.7 according to a report.<sup>40</sup>

One needs to follow a very lengthy process to obtain a permit to possess a gun for self-defence. For a licence for sports or hunting, one must be a member of the Indonesian Shooting and Hunting Association (Persatuan Menembak dan Berburu Indonesia, PERBAKIN) and one must be a member of an authorised shooting club for at least a year before applying for a permit. For a licence for self-defence, applicants must apply for a letter of recommendation from the intelligence office of the local police headquarters with a C.V., letter of good behaviour from local police, proof of employment, certificate of good health, and certification of shooting ability. The applicant's address and occupation are verified, and the director of the Intelligence Office issues a letter of recommendation, if everything is in order. The recommendation and the other documents are sent to the National Police headquarters where the firearms and explosives control office conducts a background check, administers psychological tests, and checks the applicant's ability to handle the firearms. Then the gun in question is tested and then a permit is signed by the National Police Commander and is issued.

## VII. CONCLUSION

The answer to the question of why Indonesia has such a high crime rate despite having one of the least per capita gun ownership rates in the world is ineffective law enforcement. Effective law enforcement serves as a direct solution to the problem of gun control. Indonesia has a high crime rate due to ineffective law enforcement in the country.<sup>41</sup> Cases of smuggling of firearms into Indonesia are high<sup>42</sup> and thus, even when the gun policy is stringent and per capita gun ownership is low. It must be observed that per capita gun ownership is calculated based on the number of legally acquired and registered firearms and firearms acquired by illegal means do not affect this number. Although the numbers suggest very few civilians owning firearms, in reality, many of the civilians have access to guns sold illegally by smuggling or made in local factories. This is assisted by a corrupt system which facilitates the circulation of illegal arms. Corrupt law enforcement and authorities which may let smuggling

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<sup>40</sup> *Id.*, at 7

<sup>41</sup> Jim Della-Giacoma, *Indonesia's Police: The Problem of Deadly Force*, International Crisis Group, (June 18, 2013) <https://www.crisisgroup.org/asia/south-east-asia/indonesia/indonesia-s-police-problem-deadly-force>

<sup>42</sup> Alpers, Philip and Michael Picard, *Indonesia — Gun Facts, Figures and the Law*, Sydney School of Public Health, The University of Sydney, GunPolicy.org, (9 June, 2020) <https://www.gunpolicy.org/firearms/region/indonesia>

pass, and criminal networks which help circulate such firearms, defeat the purpose of strict gun control policy in the country.

What we can deduce as a solution to the problem of gun control from the seemingly functional model of gun control in Taiwan, is that problem of gun control is solved by eliminating the root cause of why guns are needed in the first place. By dealing with poverty and empowering law enforcement, we eliminate the very need for civilians to bear arms.

In India, the issue of gun control legislation raises many questions about poverty, crime rate, smuggling, and illegal gun factories. India can have a lenient gun control policy, but this will only make it harder for the law enforcement to police. Crime is caused due to many factors including social issues like poverty and substance abuse. This shows the interconnected nature of society and how the problems are rooted back in people's well-being. Thus, to reduce crime in the country, the government should not only ensure a rigid law enforcement system, but also uplift the society. Amendments ensuring the empowerment of law enforcement officers will ensure an effective system and the administration's work in uplifting people in the society and poverty alleviation schemes will help reduce crime rates indirectly. Thus, the fear of crime in society can be solved by ensuring social well-being and security in the long term. Because irrespective of gun control laws, one will find ways to cause harm when they have such intent. Violent crime can only be stopped by effective law enforcement and with policy that will ensure that no one is forced into criminality.

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