

## GUNS - A BOON OR A BANE UNDER THE U.S CONSTITUTION

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*“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.”<sup>2</sup>*

### ABSTRACT

*The right to keep and bear arms under the Second Amendment to the US Constitution exists with the people for their own protection as well as protection from a tyrannical government if such a government comes into existence in the USA.*

*In this research, we will give a brief about the evolution and development of the Second Amendment and the present status of the Second Amendment under the US Constitution.*

*The purpose of this study is to show how the Second Amendment that grants the right to bear a gun to the individuals which includes the goons in the society, who do not respect the constitutional mandate.*

*We also further look into the efforts of the government in controlling gun violence in USA. Which shall be analysed in the light of cases and recent events which mostly favour the Second Amendment rights guaranteed to every citizen of the USA and hence the same has not been removed from the US Constitution.*

**Keywords:** *Arms, Guns, Firearms, Regulation, Second Amendment, US Constitution.*

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<sup>2</sup> The Constitution of the United States, <http://www.usconstitution.net/const.pdf>

## INTRODUCTION

The right to bear arms is one of the most debated aspects of the American Bill of Rights. This right guaranteed under the Second Amendment to the US Constitution has created divided opinion about the validity of the right to bear arms. The abuse and misuse of the right guaranteed under the Second Amendment to the US Constitution has become a matter of concern with regard to the safety and security of the citizens of USA.

In this article, an effort is made to highlight on the origin of right to bear arms and the objective behind granting the right to bear arms. Further, this paper looks into the manner in which the right to bear arms is misused by few citizens which forces the innocent people to live in constant fear of death.

## ORIGIN OF THE RIGHT TO BEAR ARMS

The American colonies were initially ruled by the British who tried to interfere with trade and commerce and imposed laws and regulations which ultimately limited the ability of the colonies to trade with other countries and putting up barriers to manufacturing in the colonies. One among such barriers was the enactment of the Sugar Act of 1764 and the Stamp Act of 1765 which imposed barriers on trade in American colonies which led to widespread unrest and rioting.

An attempt to provide right to bear arms was done by a group of colonists who submitted a series of resolutions to Governor Gage which stated as under: “WHEREAS, by an Act of Parliament, of the first of King William and Queen Mary, it is declared, that the Subjects being Protestants, may have Arms for their Defence; it is the Opinion of this town, that the said Declaration is founded in Nature, Reason and sound Policy, and is well adapted for the necessary Defence of the Community”.<sup>3</sup> Governor Gage, however, rejected the petition.

Even though there was an embargo on the shipments of firearms and gun powder, the colonies still had stored enough stock in a specially built powder house and the same was ordered to be seized by Governor Gage and brought back to Boston for safe keeping. This led

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<sup>3</sup> Bruce W.Krafft, *Brief Look at the Origins and History of the Second Amendment*, (Nov. 13, 2012), <http://www.thetruthaboutguns.com/2012/11/bruce-w-krafft/a-brief-look-at-the-origins-and-history-of-the-second-amendment/>.

to the evolution of the need to protect the people from arbitrary decisions of the government. This led to the need to bring an end to the submissive living of the people who were forced to live at the mercy of the government.

There was a need for a constitutional guarantee for protection of the rights of people. James Madison and Thomas Jefferson were the pioneers of advocating the need for Bill of Rights. Thomas Jefferson opined - "*A bill of rights is what the people are entitled to against every government on earth, general or particular, and what no just government should refuse.*"<sup>4</sup>

Subsequently in 1787, the Philadelphia Convention was convened and in 1791, the US Constitution was amended to introduce the Bill of Rights into the U.S. Constitution which provided the right to bear arms under the Second Amendment.

It is believed that the seizure of arms and ammunition of the American colonists by the British was one of the reasons that led to the inclusion of the right to bear arms in the Bill of Rights in America. Another reason to grant the right was protection of citizens against government tyranny.

## **U.S SUPREME COURT ON THE SECOND AMENDMENT**

It is believed that where there is a right, there is a remedy. Also where there is a right there is a restriction. The same became evident in the case of *United States v. Miller*<sup>5</sup>. In this case, Jack Miller and one other person were indicted for transporting an unregistered sawed-off shotgun across state lines in violation of the National Firearms Act of 1934. Miller argued that provisions regulating the interstate transport of certain firearms violated the Second Amendment. The U.S. District Court for the Western District of Arkansas agreed with Miller. The case was appealed to the Supreme Court, which reversed the district court's order. The Supreme Court concluded that the District Court erred in holding the National Firearms Act provisions unconstitutional.

Subsequently, the United States Supreme Court in the case of *District of Columbia v. Heller*<sup>6</sup> interpreted that the Second Amendment to the U.S. Constitution confers an individual right to

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<sup>4</sup> *The Bill of Rights: A Brief History*, (Mar. 4, 2002), [https://www.aclu.org/racial-justice\\_prisoners-rights\\_drug-law-reform\\_immigrants-rights/bill-rights-brief-history](https://www.aclu.org/racial-justice_prisoners-rights_drug-law-reform_immigrants-rights/bill-rights-brief-history)

<sup>5</sup> *United States v. Miller*, 307 U.S. 174 (1939)

<sup>6</sup> *District of Columbia v. Heller*, 554 U.S.570 (2008)

possess a firearm for traditionally lawful purposes such as self-defence. It also ruled that two District of Columbia provisions such as banning of handguns and requirement of lawful firearms in the home to be disassembled or trigger-locked violate this right. This judgment of the Supreme Court guaranteed the right to bear arms as guaranteed under the US constitution.

In the case of *Parker v. District of Columbia*<sup>7</sup> there were laws regarding private gun ownership - namely a ban on new registration of handguns, a ban on carrying a pistol without a license and a requirement that firearms be kept unloaded and locked - violated the Second Amendment. The Supreme Court held that individuals have a right under the Second Amendment to own handguns for their own personal protection and keep them in their home without placing a trigger lock on them.

## **LEGISLATURE'S EFFORT FOR ARMS CONTROL**

### **Pre World War Scenario**

The gun control in the United States of America prior to World War-I was never an important federal legislative subject. In the early nineties both the State as well as the local authorities attempted to regulate the carrying of concealed weapons. Senator Shields of Tennessee in the year 1915 proposed to ban the interstate commerce of handguns but it was not given the effect of an enactment.

### **Post World War Scenario**

Subsequently urban crime and handguns received a lot attention post World War-I which led to the enacting of a series of state and local legislations on firearms. The various legislations enacted in this era on firearms are enunciated as below:

### **National Firearms Act, 1934 and Federal Firearms Act, 1938**

The enactment of National Firearms Act, 1934 and Federal Firearms Act, 1938 enhanced the role of Federal government. The incidents of gangster-violence personified by John Dillinger necessitated the Federal Government to enact National Firearms Act, 1934. This Act covered civilian ownership of machine guns, sawed-off shotguns, silencers and other relatively rare

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7. K.L. Jamison, Landmark Decision: Parker v District of Columbia (Aug. 1, 2007), <https://www.usconcealedcarry.com/ccm-columns/its-just-the-law/landmark-decision-parker-v-district-of-columbia/>

firearms which were known as gangster weapons before the enactment of National Firearms Act. The Federal government imposed tax of \$200 on the traffic of weapons.

Subsequent to the enactment of Federal Firearms Act, 1938, the manufacturers, dealers and importers handling inter-state shipping of guns were required to obtain federal licenses.<sup>8</sup> Records of names and address of the persons to whom guns were sold have to be maintained under this legislation. There was a prohibition of selling the arms and ammunitions to the convicts of certain crimes or to persons who did not have the permit for a gun.<sup>9</sup>

### **Gun Control Act, 1968**

With the assassination of John F. Kennedy by mail order gun, the need for legislation to eliminate interstate shipments of firearms and ammunitions was felt. Federal Government therefore enacted the Gun Control Act, 1968 which provided for denying access to firearms to certain defined groups such as minors, convicted felons and persons adjudicated as mentally ill or those committed to mental institutions. Further, certification by the Secretary of Treasury was made mandatory for importing of fire arms for sporting purposes.

The Gun Control Act, 1968 also required the dealers to maintain records of commercially sold guns.<sup>10</sup> It also established special penalties for the use of a firearm in federal drug trafficking offence or crime of violence.

### **Law Enforcement Protection Act, 1986**

After two decades, “Cop Killer Bullets” were declared as illegal after the enactment of the Law Enforcement Protection Act in 1986. Also in the same year Firearms Owners’ Protection Act was enacted which imposed additional penalties for persons using a firearm during certain crimes and persons who were illegally shipping guns were charged with robbery or burglary.<sup>11</sup>

### **Crime Control Act, 1990**

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<sup>8</sup>Franklin E. Zimring, *Fire Arms and Federal Law: Gun Control Act, 1968*, <http://www.saf.org/lawreviews/zimring68.htm>

<sup>9</sup>John Gettings and Catherine McNiff, *Milestones in Federal Gun Control Legislation*, (Aug. 20, 2013), <http://www.infoplease.com/spot/guntime1.html>.

<sup>10</sup>William J. Krouse, *Gun Control Legislation*, *Congressional Research Service*, (Nov. 14, 2012), <http://www.fas.org/sgp/crs/misc/RL32842.pdf>

<sup>11</sup>John Gettings and Catherine McNiff, *Milestones in Federal Gun Control Legislation*, (Aug. 20, 2013), <http://www.infoplease.com/spot/guntime1.html>.

Under this Act establishment of “drug-free school zones” which also included criminal penalties for possessing or discharging a firearm in a school zone.

### **Brady Handgun Violence Prevention Act, 1994 and Violent Crime Control And Law Enforcement Act, 1994**

In the year 1994 two enactments were passed- Brady Handgun Violence Prevention Act, Violent Crime Control and Law Enforcement Act in order to facilitate effective gun control in USA.

The enactment of the Brady Handgun Violence Prevention Act, 1994 led to the imposition of a five day waiting period and background checking before a licensed gun importer, manufacturer or dealer could sell or deliver a hand gun to an unlicensed individual. This new check system was to apply to all firearms and allowed the checks to be done over the phone or electronically.

Simultaneously Violent Crime Control and Law Enforcement Act, 1994, commonly referred to as “Assault Weapons Bans” was passed. This legislation prohibited juveniles from possessing or selling handguns and directed the Attorney General to evaluate proposed and existing State juvenile gun laws.

### **INSTANCES OF MISUSE OF SECOND AMENDMENT**

The right guaranteed under the Second Amendment was subjected to misuse and it had an adverse effect on right to life in USA. Due to the recent massacres, President Barack Obama introduced proposals in order to tighten Gun-control Laws which included background checking for guns sales etc.

The period between 2008 and 2013 has been studied in order to ascertain the extent of misuse of guns in USA. Some instances of gun shootings have been discussed herein below in order to highlight the failure of the US government in controlling the misuse of Second Amendment.

### **Terrorizing experiences in 2008**

The misuse of guns has reached its peak during 2008. There was an instance where two women were shot dead by a nursing student at Louisiana Technical College in February after which the shooter shot herself and died.

Another shocking incident was the misuse of guns at school by a 14 year old boy who shot a 15 year old student at a high school which resulted in the victim to be brain dead.

In the Northern Illinois University, a former graduate opened fire in the classroom which wounded more than 17 students and killed 5 students on 14<sup>th</sup> February. It was stated that the shooter had stopped taking medicines and was acting somewhat erratic who later shot himself after opening fire.

Another incident worth mentioning here is the murder of Omero Mendez by a 16 year old boy who was later arrested and sentenced to 18 years in prison. Further the shooting of Amanda Collette by her classmate at Dillard High School lead to imprisonment of the shooter for 25 years.

### **Mishaps in 2009**

The misuse of the Second Amendment continued in the year of 2009 with the shootings at the basketball game on April 26 at Dunbar High School where shots were fired from a truck that critically wounded five people. Georgio Dukes, an 18 year old later was charged with felony. Further, on May 18, 21-year-old Justin Cosby was shot dead in the basement of Harvard University.

The whole nation was astonished on May 18<sup>th</sup> when 15 year old Justin Doucet went to the rest room and took out a .25 caliber semi-automatic handgun belonging to his father and attempted to shoot the teacher. When the target missed Doucet walked into the restroom and shot himself in the head. Safety of life on campus was a requirement after three people including a 17 year old female student were wounded at the International Studies Academy after a man opened fire from his car.

### **Unfortunate events of 2010**

The year 2010 saw a series of shootings which instilled fear among the people. On 5<sup>th</sup> February, Hammad Memon, a native of Pakistan killed 14 year old Todd Brown in a crowded

school hallway of Discovery Middle School during changing of classes. He pleaded guilty in 2013 and was sentenced to 30 years in prison.

The shooting on February 12<sup>th</sup> shocked the professors after Amy Bishop Anderson, a biology professor shot six of her colleagues, killing three of them. She was sentenced to a life in 2012. On 9<sup>th</sup> March, due to a minute disappointment of receiving unsatisfactory job evaluation, a man opened fire at the Ohio State University, wounding one employee and killing two employees.

The nation shivered after two six year old girls were hit and grazed by bullets after a 41 year old man opened fire with a .357 handgun on a group of children during their lunch break at Kelly Elementary School. In October, gang related shootings occurred where a 15 year old student of Alisal High School and a 20 year old student of Marinette High School were shot to death at two different incidents.

In November, a 15 year old boy entered into the classroom and fired shots with a hand gun at the projector and took 23 students and a teacher hostage inside a class room. After the police entered the building, the 15 year old boy shot himself dead. Further, the gun shootings at Aurora Central High School led to a 17 year old girl being paralysed. The gun shootings occurred due to gang rivalry. The shooter was sentenced to 35 years in prison.

### **Chaotic 2011**

The killing of Assistant Principal Dr. Vicki Kaspar and injury to the Principal of Millard High School and injuring the nurse by an 18 year old student was astonishing. The shooter fatally shot himself later. The shooting by a 15 year old at the Cape Fear High School which led to hospitalization of a 15 year girl who was shot in the neck was horrifying. The shooter was sentenced to 15 years in prison.

### **Barbaric usage of guns in 2012**

The year 2012 recorded more misuse of guns. On 27<sup>th</sup> February, a student opened fire at Chardon High School, killing three students and injuring six in the State of Ohio. When enquired, the student said that he randomly picked students. Further on 7<sup>th</sup> April, a gunman suffering from paranoid schizophrenia told the students to line up against the wall and later killed seven of them and wounding three others at Oikos University.

During July, a person opened fire during the midnight screening of a film in the crowded theatre. This resulted in the death of 12 people and 38 people were injured. Further, in August, a gunman opened fire at a Sikh temple resulting in the death of six persons and injuring three. In the same month, 15 year old Rober Gladden shot a 17 year old with a double barrel shotgun who suffered critical wounds. He was sentenced to 35 years in prison.

The shootings at the Haloween party in the University of Southern California Campus after an argument is worth mentioning where the victim was shot seven times. On 11<sup>th</sup> December, a person opened fire using AR-15 semiautomatic assault rifle in the Clackamas Town Centre Mall located in the State of Oregon killing two people.

In yet another case, a 20-year old killed his mother at home prior to the massacre he committed by killing 20 children and 6 adults at a School in the City of Newtown. This shooting is considered to the second deadliest in U.S. history, after the 2007 shooting at Virginia Polytechnic Institute which claimed lives of 32 people.

### **Irreconcilable events of 2013**

It is astonishing to note that the number of incidents of gun shootings in 2013 is more than those which occurred 2012. There were a series of shootings that happened in January, probably the highest ever in any month of a particular year.

In January, 2013 a 16 year old entered into the classroom and shot two students and injured the teacher. Further, shootings happened at Osborn High School, Stevens Institute of Business and Arts and Hazard Community and Technical College where deaths occurred due to gun shootings.

There were few more gun mishaps which occurred at the parking lot of Chicago State University and the Lone Star College campus. A special mention has to be made about the shooting at the Price Middle School where an argument led to firing of multiple shots. In April, a campus police officer was shot dead at Massachusetts Institute of Technology. It is believed that the suspects of Boston Marathon bombings were responsible for this shooting. In the month of August, two instances of gun shootings were reported wherein the victims were severely injured.

Recently, on 4<sup>th</sup> December a 15-year-old student was shot by a 17-year-old student near a soccer field in West Orange High School after a fight broke out between the two students.

### **Startling beginning of 2014**

The year began with the tragic incident of gun shootings of two students, a girl and a boy both of the age of 15 at a high school in Northern Philadelphia. Within just six weeks of the year 2014 the gun violence in the schools and colleges of United States of America has stormed up to 13. The analysts who are of the support of tighter gun control mechanisms in the USA advocate that 14 months since the Newtown incident the gun shootings have statistically increased to a great extent and they along with few other groups are in favour of stricter rules relating to gun control have demanded the Congress to pay more attention on the issue.

### **PREVENTION PROGRAMS**

As there was evident misuse of guns, violence prevention and educational programs were established in various schools and communities across USA. These programs aim to change the personal behaviour of both the children and parents. The children are encouraged to stay away from guns and encourage children to resolve disputes without resorting to violence. The program direct parents to store guns safely.

Prevention programs such as SPEAK UP program initiated by the Center to Prevent Youth Violence, Gun Safety Parent Counselling Program by Brady Center to Prevent Gun Violence are efforts to curb gun violence. There were many programs in order to convince the children to say “no” to guns which failed miserably. The Gun “buy-back” program was an effort to curb misuse of guns that failed miserably whereas **“Gun Bounty” program** that involved cash rewards showed positive results. A recent development for preventing gun violence is the effort of Americans for Responsible Solutions which is a non-profit organization started in the year 2013. It encourages elected officials to stand up for solutions to prevent gun violence.

### **CONCLUSION**

The right guaranteed under the Second Amendment has been misused by few notorious groups and also the children’s belonging to the school and college going lot who are directly

casting an adverse effect on the lives of the people. It is suggested that the legislature should enact tougher laws for gun control. It is further suggested that efforts must be taken in order to initiate effective programs by the government to control the usage of guns with special reference to minors. The executive must be given more freedom to enforce the law in an effective manner and the judicial decisions should be of deterrent nature which would completely stop the misuse of Second Amendment.

### **BIBLIOGRAPHY**

1. Bruce W.Krafft, *Brief Look at the Origins and History of the Second Amendment*, (Nov. 13, 2012), <http://www.thetruthaboutguns.com/2012/11/bruce-w-krafft/a-brief-look-at-the-origins-and-history-of-the-second-amendment/>.
2. *The Bill of Rights: A Brief History*, (Mar. 4, 2002), <https://www.aclu.org/racial-justice-prisoners-rights-drug-law-reform-immigrants-rights/bill-rights-brief-history>
3. *United States v. Miller*, 307 U.S. 174 (1939)
4. *District of Columbia v. Heller*, 554 U.S.570 (2008)
5. K.L. Jamison, *Landmark Decision: Parker v District of Columbia* (Aug. 1, 2007), <https://www.usconcealedcarry.com/ccm-columns/its-just-the-law/landmark-decision-parker-v-district-of-columbia/>
6. Franklin E. Zimring, *Fire Arms and Federal Law: Gun Control Act, 1968*, <http://www.saf.org/lawreviews/zimring68.html>.
7. John Gettings and Catherine McNiff, *Milestones in Federal Gun Control Legislation*, (Aug. 20, 2013), <http://www.infoplease.com/spot/guntime1.html>.
8. William J. Krouse, *Gun Control Legislation, Congressional Research Service*, (Nov. 14, 2012), <http://www.fas.org/sgp/crs/misc/RL32842.pdf>
9. John Gettings and Catherine McNiff, *Milestones in Federal Gun Control Legislation*, (Aug 20, 2013), <http://www.infoplease.com/spot/guntime1.html>.
10. *About America: The Constitution Of The United States Of America With Explanatory Notes* (2004)  
[http://photos.state.gov/libraries/korea/49271/dwoa\\_122709/About\\_America.pdf](http://photos.state.gov/libraries/korea/49271/dwoa_122709/About_America.pdf)

